

**Deuteronomy 21:1-9 a programmatic anomaly? A thematic and programmatic
analysis of Deuteronomy 21:1-9 within the context of the Deuteronomist's
agenda**



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Declaration

By submitting this thesis electronically, I declare that the entirety of the work contained therein is my own original work, that I am the authorship owner thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

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Abstract

Deuteronomy 21:1-9 falls within the Deuteronomistic legal corpus and, more broadly, within the Deuteronomistic History. Its final form, as recognized by several scholars, betrays an origin of earlier antiquity than the immediate context of Deuteronomy suggests. Further to this, the nature of the ritual, frequently called the “‘eglā ritual”, appears at first reading, to disobey some of the basic tenets of the laws of Deuteronomy and this bears some investigation. At the heart of the book of Deuteronomy is “the place that the LORD your God will choose out of all your tribes to put his name and make his habitation there” (*The Holy Bible: English Standard Version*, 2001, Deut 12:5). This centralized place of worship is *the* place where all cultic activity is to occur. The importance of this “place” is highlighted by the fact that the notion is unique to the Deuteronomistic History (Deut to 2 Kings) and is presented to the exclusion of any local sanctuary for worship. The allowing of secular slaughter of animals for food in Deuteronomy 12:15 further highlights this cultic centralization motif, by making the local slaughter of animals non-cultic. The appearance of the “‘eglā ritual”, in which there is the killing of an animal in a local context for what appear to be cultic purposes, seems to disobey this fundamental prescription of the Deuteronomistic work reinforced throughout the Deuteronomistic History in the evaluation of the kings.

Further to this oddity, there is the matter of the clumsiness of the inclusion of the priests in verse 5, which seem to serve no cultic purpose; the need for both judges *and* elders in the act of measurement in verse 2; and the hand-washing accompanied by what appears to be an oath formula. This local rite, then, seems to stick out from the centralizing YHWHistic landscape of Deuteronomy as somewhat anomalous and begs the question, “does it belong?”

To answer this question, more clearly formulated in the title of this study, the specific aims or agendas of the Deuteronomist are ascertained and defined in order to discover how these agendas agree with the ritual. These are defined as, firstly, the divesting of the monarchy of sovereign power; secondly, the centralization of the Cult; and thirdly, the reassignment of the jurisdiction of the judiciary from the monarch to the cult. A detailed exegesis follows, after which the “‘eglā ritual” is specifically examined with regard to the agendas of the Deuteronomist.

It is concluded that the “‘eglā ritual”, having undergone a lengthy process of development, appears as thoroughly Deuteronomistic in its final form. Its chief impact however, since it is neither cultic, nor entirely judicial, since it fails to deal with the guilt of the unknown perpetrator of the killing, is of a socially formative nature. This too would appear to be congruent with the apparent purpose of the Deuteronomist in presenting legislation for a new social, political and geographical context.

The “‘eglā ritual” is thus not a programmatic anomaly since it accords with the chief agendas of the Deuteronomist.

Opsomming

Deuteronomium 21:9 val spesifiek binne die Deuteronomiese wetskorpus en meer in die algemeen, in die Deuteronomistiese Geskiedenis. Verskeie vakkundiges dui aan dat die finale vorm op 'n vroeër oorsprong dui as wat die onmiddellike konteks suggereer. Met die eerste oogopslag blyk dit dat die aard van die ritueel, algemeen bekend as “‘eglā ritueel”, nie hou aan die basiese beginsels van die wette van Deuteronomium nie, en dit vereis daarom dat verdere ondersoek ingestel moet word. Die onderliggende tema van die boek Deuteronomium is “maar die plek wat die Here julle God uit al julle stamme sal uitkies om sy Naam daar te vestig om daar te woon, moet julle opsoek en daarheen moet jy kom” (*Die Bybel, Afrikaans*, 1933/1953 vertaling, Deut 12:5). Hierdie sentrale plek van aanbidding is die plek waar alle kulturele aktiwiteite moet plaasvind. Die belangrikheid van hierdie sentrale “plek” is uniek aan die Deuteronomistiese Geskiedenis (Deuteronomium tot 2 Konings) en word beklemtoon deur die uitsluiting van enige ander plaaslike heiligdom vir aanbidding. Die toelating van die sekulêre slag van diere vir kos in Deuteronomium 12:15, dui dan ook verder op die kultiese sentraliseringsmotief, deurdat dit die plaaslike slag van diere as nie-kulties beklemtoon. Die voorkoms van die “‘eglā ritueel”, wat dui op die doodmaak van 'n dier in die plaaslike konteks, skynbaar vir kultiese doeleindes, verontagsaam klaarblyklik hierdie fundamentele voorskrifte van die Deuteronomistiese werk, soos ook verder blyk uit die hele Deuteronomistiese Geskiedenis se evaluering van die onderskeie konings.

Benewens hierdie afwyking, is daar ook die kwessie van die lompheid in die insluiting van die priesters in vers 5 wat lyk asof dit nie 'n kultiese doel dien nie; die betrekking van beide regters/rigters en ouderlinge tydens die uitvoer van die afstandsmeting in vers 2; sowel as die handwassery wat vergesel word van 'n skynbare eedformule. Dié plaaslike rituele blyk dan haaks te staan op die YHWHistiese landskap van sentralisering in Deuteronomium, wat noodwendig lei tot die vraag, “Hoort die ritueel hier?”

Om hierdie vraag te beantwoord, soos uitgedruk in die titel van hierdie studie, moet die spesifieke doelwitte of agendas van die Deuteronomis vasgestel en gedefinieer word om te bepaal of hierdie agendas ooreenkom met die ritueel, of nie. Die eerste agenda wat gedefinieer word, is die stroping van die monargie van sowereine krag;

tweedens, die sentralisering van die kultus en derdens, die verskuiwing van die regspraak vanaf die monarg na die kultus. 'n Gedetailleerde eksegeese volg, waarna die “‘eglā ritueel” spesifiek met betrekking tot die agendas van die Deuteronomis, ondersoek word.

Die gevolgtrekking word gemaak dat die “‘eglā ritueel”, na 'n lang proses van ontwikkeling, in sy finale vorm as deeglik Deuteronomisties voorkom. Die belangrikste impak van die ritueel is egter van 'n sosiaal-formatiewe aard, want dit is nog kulties, nog in geheel geregtelik, aangesien dit nie gaan om die onbekende skuldige by die slag van die dier nie. Dit blyk ook ooreen te stem met die oënskynlike doel van die Deuteronomis om wetgewing vir 'n nuwe sosiale, politieke en geografiese konteks daar te stel.

Die “‘eglā ritueel” is dus nie 'n programmatiese afwyking nie, aangesien dit strook met die belangrikste van die Deuteronomis se agendas.

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Dedications

To my Dad, the late Richard Charles Robinson, who completed both his Matric and a BComm, part time, while holding down a low-pay job to support his young family. I have a new respect for him.

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Chapter 1

Introduction

1.1. Rationale and motivation

I am a minister in a small Presbyterian parish which borders on a commercial corridor. This means that, in the inner-city South African context, we deal with a community of street-dwellers who inhabit the spaces in the city which provide some protection from the environment as well as opportunities for finding resources for survival. This community appears to the formal residents to be one of conflict and disharmony, and yet, when an event or person threatens the wellbeing of the street community, there is a solidarity which is demonstrated which can be to the benefit of everyone.

In June 2014 there was a break-in on a local building site, but when the locals were questioned about the theft, including several pieces of equipment which went missing, no-one would give any information for fear of being victimized by the thieves. Not only would no-one take responsibility, even those who had witnessed the event wouldn't come forward. That is until one of the "homeless" men in the area confessed that he had nothing to do with the crime, but that he would point out the thieves. A short search turned up both the criminals and their booty, so that the work could continue on site.

A week later I happened to look at the exegesis of Deuteronomy 21:1-9 and found that some of the popular commentators on this seemingly awkward text linked the kerugma captured in it to themes such as corporate responsibility, the damage crime does to society and the need to purge civilization of the scourge of crime against person, community and land in some organized way (Gaebelein, Kalland, Madvig, Wolf, Huey, *et al.*, 1992: 130; Merrill, 1994: 287–288). I soon discovered that this obscure text threw up some questions which needed answers if it was to be understood, let alone preached.

¹"If in the land that the LORD your God is giving you to possess someone is found slain, lying in the open country, and it is not known who killed him, ²then your elders

and your judges shall come out, and they shall measure the distance to the surrounding cities. ³ And the elders of the city that is nearest to the slain man shall take a heifer that has never been worked and that has not pulled in a yoke. ⁴ And the elders of that city shall bring the heifer down to a valley with running water, which is neither plowed nor sown, and shall break the heifer's neck there in the valley. ⁵ Then the priests, the sons of Levi, shall come forward, for the LORD your God has chosen them to minister to him and to bless in the name of the LORD, and by their word every dispute and every assault shall be settled. ⁶ And all the elders of that city nearest to the slain man shall wash their hands over the heifer whose neck was broken in the valley, ⁷ and they shall testify, 'Our hands did not shed this blood, nor did our eyes see it shed. ⁸ Accept atonement, O LORD, for your people Israel, whom you have redeemed, and do not set the guilt of innocent blood in the midst of your people Israel, so that their blood guilt be atoned for.' ⁹ So you shall purge the guilt of innocent blood from your midst, when you do what is right in the sight of the LORD.

(The Holy Bible: English Standard Version, 2001, Deuteronomy 21:1-9)

Further research began to turn up apparent anomalies. The pericope began to appear to sit very uncomfortably in the book of Deuteronomy, mainly in that the sacrifice was carried out in the open field and not in the cultic center, Jerusalem. Was this short law an accident in the legal corpus of Deuteronomy? Or had it been placed there very deliberately to cover an aspect of settled life in Canaan which needed to be dealt with locally for greatest effect? Even further, was the ritual a literary construct designed to influence the heart of the reader even if it was never to be practiced? This led me to a full scale investigation into the background of the text and, since I had enrolled for a Masters, it seemed an ideal avenue of research for the purpose of a thesis.

The legal corpus of the Covenant Code (Ex 21:1-23:19) and the Priestly Holiness Code (Leviticus 17-23) are narrated as the Divine lawgiver instructing Moses who then instructs the people. The law is given in these two corpuses to the leader of the people who then delivers them to the people as the representative of the lawgiver. The book of Deuteronomy however is presented as a speech from Moses to the people of Israel (Fishbane, 1985). The speech happens on the eve of the Jordan crossing (Deut 11:31) and is something of a valedictory speech by Moses who would not enter the land (Deut 1:37) (Carmichael, 1974: 17). Unlike the Covenant Code

and the Holiness Code, the laws of Deuteronomy look forward to the new life of a settled nation (Deut 4:1). Walter Brueggemann calls it “Reflections at the boundary”, or the sermon delivered by Moses to the people of Israel prior to their inheriting the land of Canaan (Brueggemann, 2003: 43).

The book of Deuteronomy sets itself up as the instruction of Moses: “In the fortieth year, on the first day of the eleventh month, Moses spoke to the people of Israel according to all that the Lord had given him in commandment to them” (*The Holy Bible: English Standard Version*, 2001, Deuteronomy 1:3). But the work of recent scholarship has observed certain themes and emphases, which are out of place in the context of a fledgling nation which has not yet been consolidated under a monarch, and must be placed much later in the history of Israel than the conquest of Canaan.

The themes of leadership and administration of a new nation in its land are quickly picked up with the establishment of a judiciary (Deut 17:8ff), regulations for the future king (Deut 17:14ff), and the endorsement of a new, seemingly conflated office of Levitical Priest, where the Levite and Priest are afforded equal status (cf. Numbers 3:5-10). Cultic practice is also redefined, with the central sanctuary (in Jerusalem): “But you shall seek the place that the Lord your God will choose out of all your tribes to put his name and make his habitation there.” (*The Holy Bible: English Standard Version*, 2001, Deuteronomy 12:5). These new themes in Deuteronomy, and the strong parallels with Josiah’s reforms in 2 Kings, suggest that, along with the links to Exodus, it had scribal, prophetic and priestly influence of the immediate pre-exilic period and possibly even the exile itself.

The purpose of the book of Deuteronomy, which has been linked to Josiah’s reforms with its particular themes and its apparent influences and origins, would seem to have definite objectives. The links with Josiah initially place the date of Deuteronomy in the 7th Century BC, which puts it in a particular geo-political environment. Being linked to Josiah’s reforms, it was meant to address the peculiar situation which the Southern Kingdom of the divided Monarchy faced in that era. With the Northern Kingdom having fallen and there being a threat from Assyria, the need to rally the nation and regulate religion was paramount. Assimilation into the surrounding culture was an imminent threat and would be a death blow for Judah and that could easily

occur if religion remained local and the practices were allowed to continue alongside non-Israelite religion. The risk in this case was that the lack of one common statement of faith could lead to religious infiltration from the foreign power and the undermining of the nation through religious fragmentation. Walter Brueggemann describes the programme as a “hard-fought consensus in Israel about the key claims of Yahwistic faith” (2001: 21). Ultimately, the liturgical use of Deuteronomy, says Brueggemann, was the free agricultural land owners swearing allegiance to YHWH over against Assyria (2001: 21). It is exactly these “key claims” which need to be distilled in order to evaluate the place of the *‘eglā* ritual in the Deuteronomistic work with a view to establishing the programme of the Deuteronomist and hence the appropriateness of the *‘eglā* ritual in its place.

The pericope in question, namely Deuteronomy 21:1-9, finds itself within the corpus of Deuteronomy’s legal material although it appears to fit uncomfortably. The present study will attempt to solve this discomfort and answer some questions regarding the arrangement and placement of this casuistic law and its various elements. The *‘eglā* ritual, as it has been called, appears uniquely and originally in the legal corpus of Deuteronomy with no precedent anywhere else in the Pentateuch. As such its exception may uncover some of the particular emphases of the Deuteronomist.

1.2. Deuteronomy 21:1-9: the need for a hermeneutic and contextual exegesis

There are several commentaries which deal with the *‘eglā* ritual as part of the regular comment, but few works which deal specifically with a detailed study of the pericope. The intention here is to identify the core elements of the ritual and attempt to uncover the strata which may be evident on the way to its inclusion in the final form of Deuteronomy.

The lawgiver writes to deal with a situation where the perpetrator of a murder is unknown. Perhaps it will help to start with that which appears relatively clear:

- i. The Land, given in promise, is polluted with innocent blood.
- ii. Those in the town nearest to the body are held responsible in some way and called to account.

- iii. A ritual, perhaps an offering, is required to counter the harmful effects of the act of the shedding of innocent blood.
- iv. An unworked heifer, untilled land and the water from a perennial stream are the required elements in the ritual.
- v. The administrative and judicial leaders appear to represent the community.
- vi. The religious leaders are called to preside, but not act.
- vii. A statement of innocence and ignorance is required.
- viii. The end result is that the threat to land and inhabitants is averted through expiation.

The nature and content of all of these elements, however, is shrouded in mystery and raises several questions. Looking at the obvious themes in Deuteronomy of cultic, judicial and administrative centralization, this ritual which finds itself in the local setting with local leaders and judges taking the lead and the priests appearing only in an oversight role, one begins to ask why it was included by the writer in the way it was.

On the issue of cultic centralization, the question is whether the ritual is a cultic sacrifice or not. On the issue of the priests, Gerhard von Rad already notes that their appearance is a clumsy gloss (von Rad, 1966: 136). But their appearance at a local ritual is surely, at the very least, unusual in the context of Deuteronomy.

In the exegetical chapter, I aim to undertake a verse by verse analysis of the 'eglā ritual and attempt to explain each one in the light of current scholarship. I will investigate these and several other questions raised by the text with the intention of shedding some light on the purpose and meaning of each element of the ritual and its inclusion in the legal corpus of Deuteronomy. Before formulating the specific research problem for this study, however, an overview will be given of the literature in the field. In light of this overview, it would be possible to give a clearer delineation of the problem that will be investigated.

1.3. Selected literature and approaches

According to Mosheh Weinfeld, it was De Wette, in 1805, who was the first modern scholar to discover the link between 2 Kings 22 and the book of Deuteronomy (M Weinfeld, in Freedman, Herion, Graf, Pleins & Beck, 1992: 174). The obvious inference is that the book of Deuteronomy only appeared soon after the event in 2 Kings 22, and that it is effectively a new constitution for the Josianic administration and its reforms. Mosheh Weinfeld was a pioneer in the school of Inner-Biblical Exegesis and spearheaded the investigation into the process whereby the Biblical writers reinterpreted older received material for their current times through a process of exegetical reformulation and explanation. This process can help both to unlock the intention of the Biblical writers and aid in the methodology of exegesis even in the current era.

If, as suggested by Gerhard von Rad, Deuteronomy 21:1-9 is the Yahwistic reinterpretation of an Ancient Near Eastern practice (1966: 137), then the process of that reinterpretation is what is in focus here. Scholars have acknowledged the dependence of the legal material of Deuteronomy on much older material, especially the Covenant Code, which Gerhard von Rad first identified as the primary source for Deuteronomy's legal material (von Rad, 1966: 13). This all placed the final date of the compilation of Deuteronomy (or at least the core of the book) somewhere in the region of 621 BCE or around the time of the reign of king Josiah in the neo-Assyrian period. Gerhard von Rad recognized that a large part of the Covenant Code had been included in Deuteronomy 12-26, and thus concluded that Deuteronomy was later than the former, and that it was formulated for a later and more developed economy (1966:14).

Michael Fishbane, in his work *Biblical interpretation in ancient Israel* (1985) sees in the legal material of Deuteronomy a reworking of the older material for a new purpose. He sees that purpose as the demonstration of the authority of the law-giver through reworking and recording of unclear, irrelevant or inadequate laws (1985: 232). He identifies strata of development of the literature behind its final form, called "Traditio", that which reworks a much older "Traditum" of received literature (1985: 7). While the canon of Hebrew Scripture was concluded after the turn of the era, Fishbane argues for a body of biblical literature which had been received by the faith

community as authoritative and which formed the basis of the new legal material. The sources of Deuteronomy are fragments of J and E, with all that survives in the recorded form of Deuteronomy being that which the final editors chose to preserve in amended form. Fishbane falls into the school of Inner Biblical Exegesis, positing a genuine attempt by the later Biblical writers to give clarity to the earlier Biblical material. He notes that, prior to the promulgation of Deuteronomy, the other legal material in the Pentateuch existed along with oracular law, of which the written law was only an example, neither intended as comprehensive nor for use in an actual court of law (1985: 91), and he states that within the Hebrew literature,

“the remarkable capacity of tradition radically to transform a diverse inheritance and thereby continually to build up a sense of national history and destiny is fully attested” (Fishbane, 1985: 7).

The purpose of the legal corpus of Deuteronomy 12-26 is thought of variously by scholars because of its seemingly arbitrary arrangement. That the book takes the form of a covenant ceremony with all of the elements of an Ancient Near Eastern treaty is now moot (von Rad, 1966: 21), but its purpose is a matter on which the jury remains out. Michael Fishbane asserts that the list of laws in Deuteronomy is neither comprehensive nor detailed, corroborating the search for another setting than that of the law courts. Even if the setting is broadly legal, argues Fishbane, its use in court would expose it as seriously inadequate (Fishbane, 1985: 231).

Michael Fishbane (1985), along with Benjamin Sommer (2006) and others, brings a more satisfying approach which posits a reworking of older material but retains a respect for the older received material. The concept according to Fishbane, which will be further illuminated later, assumes a “received” body of literature (Traditum) which is reworked (Tradition), to include current concerns (1985: 6). It is into this framework that the work of Ziony Zevit (1976), and others do stimulating analysis of the pericope in question, going beyond the redactional studies of the literature-critics to study the exegetical methodology of the biblical writers and attempt to uncover not only the origins of the material and the process by which it came into being, but also the interpretative methodology of the final editors. The stimulating speech by Prof Louis Jonker, “Lewend en Kragtig”, concludes in overview of the summary of the approach of scholars of the “Inner Biblical Exegesis” school, among other things, that

Inner Biblical Exegesis uncovers the process which have made older and received texts relevant to later generations (Jonker, 2011: 136).

Bernard Levinson, in his work *Deuteronomy and the Hermeneutics of Legal innovation* (1998), postulates a four stage process of growth of Deuteronomy beginning with the Covenant Code (1998: 12). Levinson, recognizing a vast overlap in the material contained in the two legal bodies, posits a concurrent working of Deuteronomy and Exodus, or at least the Covenant Code, in the 7th Century, which, he argues, accounts for the strong similarity of the language, despite the detail differences between the two (1998: 13).

He then posits a “pre-Deuteronomic” revision of the Covenant Code followed by a “Deuteronomic” redaction of the same to conform with the theology and social concerns of the Deuteronomist. Finally he argues for a Priestly redaction producing the received, or final, form. This would place the final form of Deuteronomy later than the 7th century and possibly during or after the exile. If Jean Louis Ska’s work on the Pentateuch is to be taken into account, then the final form of Deuteronomy dates from the time of the first return from exile (Ska 2006:190). Bernard Levinson further goes against von Rad’s assertion that Exodus pre-dates Deuteronomy, placing their growth and compilation concurrently and with significant interaction between the two in the form of a Deuteronomic revision of the Covenant Code prior to the final Priestly redaction of Deuteronomy (1998: 12).

Levinson claims that this process is effectively an abrogation of older work, that which Michael Fishbane would call “Traditum”, and is not the Inner Biblical Exegesis espoused by the latter, but an entire transformation of the older with new agendas, moving past inner-Biblical exegesis to a deliberate reworking of that which had already enjoyed the recognition of being sacred literature, but with specific ends in mind (Levinson, 1998: 15). He makes a claim for the “radically transformative nature of ancient Israelite textuality” (1998: 17). Stepping outside of the school of inner-Biblical exegesis, Levinson stakes a claim that the legal work of the Deuteronomist goes beyond exegesis. It is, rather, the wholesale rewriting of the older and recognized legal material with nothing more than the appearance of similarity to the ancient texts. The grammatical forms of the older material are preserved, but the

meaning is amended for the purpose of transforming society for the sake of the current administration.

What is most interesting about Levinson's work is this study of common language forms across the legal material in the Pentateuch and particularly between the Covenant Code and Deuteronomy, to show how phrases are picked up and used to give an air of familiarity to something which may be entirely novel. Levinson studies various specific laws of Deuteronomy, to show how each pericope introduces a law extant in the Covenant Code, by almost quoting it verbatim, and then progressively abrogates that same law by adding to it a restriction which rewrites the older law with an entirely new legal meaning. An example is the instruction for the Passover, which is a local rite in the Covenant Code (Exodus 12) and is reformulated to become a centralized, pilgrimage feast along with the feast of "unleavened bread" in Deuteronomy (Deut 16).

Bernard Levinson's theory and methodology are compelling and bear application to the subject of this study, especially since the consensus is that the pericope has ancient origins and has been included in Deuteronomy in a fashion which, at face value, appears seamless.

Noteworthy at this point is how Levinson's theory stretches the notion of the acceptance that various voices are juxtaposed within the Hebrew Canon without regard for harmonization, as observed within the Canonical school, for example Walter Brueggemann (2003). The school of "Inner Biblical Exegesis" goes further than the Canonical school to admit that the authors of later biblical works rewrote and reinterpreted sections of earlier received material for the sake of clarity or legal comprehensiveness. Levinson argues that the work of the author of Deuteronomy was entirely subversive and intentionally reconstructs the legal material in line with a new programme. This raises one somewhat of a moral hurdle in the work of Levinson, since the legitimacy of rewriting ancient and accepted faith documents to advance the political ends of the current administration amounts to using religion to further the ends of the governing entity. While Michael Fishbane's Inner Biblical Exegesis school preserves the integrity of Biblical writers, Levinson appears to expose them as propagandists (not a new idea) and places the book of Deuteronomy in the realm of political manipulation through religion. Since this study

is not intended specifically to look at the ethics of the book of Deuteronomy, the above might be the subject of another study.

Bernard Levinson quite harshly calls the canonical-critical approach one which treats the Hebrew Bible as a document of spiritual value which is “dipped into” (Levinson, 1998: 15). The reaction of the Canonical school against the higher critical schools of the 19th and 20th centuries is one in which the text of the Bible is studied in its final form, recognizing the various threads of thought and even the juxtaposition of contradictory elements, but chooses to put aside the diachronic approach of the earlier scholars in favor of a synchronic one. The work of the Canonical school allowed the Bible to be read for its own sake once again without the fragmentation of diachronic scholarship and as such remains compelling to those who preach and teach the Bible. Levinson however, dismisses the approach as untenable.

However, in line with Brueggemann’s view of Deuteronomy as a model commentary (2001: 25), Bernard Levinson interprets 21:1-9 as the lay solution to the offence against the land and the risk of its forfeiture. Levinson recognizes the place of the clergy and the laity in the ritual (Levinson, 2008: 215), but makes no mention of why this ritual occurs in the open fields and why the priests play no active part. An obvious problem with the pericope in question is raised in Bernard Levinson’s article “You Must Not Add Anything to What I Command You: Paradoxes of Canon and Authorship in Ancient Israel” (2003). He indicates that a large part of the authority claim of the work of the Deuteronomist is its Mosaic origin. Because Deuteronomy appears to be based on the legal corpus of Exodus, the ‘eglā ritual appears anomalous since it is entirely new and unique. It doesn’t appear to be based on any previous law although it carries some common ground with the Scapegoat Law (Lev.16) and the Red Cow ritual (Num. 19). If the law was not part of the original Sinaitic promulgation of the law, then a significant amount of work would be required to give it the air of authority required to place it in the body of law about which it is written “You shall not add to the word that I command you, nor take from it, that you may keep the commandments of the Lord your God that I command you.” (*The Holy Bible: English Standard Version*, 2001, Deut. 4:2)

Bernard Levinson’s approach is innovative in itself and, by his own analysis, falls beyond the category of Inner Biblical Exegesis. He posits an entirely new agenda, or

programme, for Deuteronomy, as distinct from the other legal material in the Pentateuch, with the phrasing and grammatical form used from the earlier material only to lend credence to the new ideology propounded in Deuteronomy. His approach stimulates thought and provides some useful methodology, but seems less than adequate if the purpose and meaning of the 'eglā ritual of 21:1-9 is to be understood. Since the ritual in Deuteronomy 21:1-9 is found nowhere else in the legal corpora of the Pentateuch, it seems to lend no credibility to the agendas of cultic centralization and local secularization which Levinson proposes since it neither occurs at the Temple, nor is it ostensibly administered by the priests. Furthermore, it is ostensibly the local leaders who act and not the central administration or judiciary, so this does appear to be a local cultic ritual. In the chapter on the themes of Deuteronomy however, it will be worth using Levinson's analysis of the same as introducing a programme of cultic centralization and local secularization as a springboard (1998: 60).

One of the key issues in this text in Deuteronomy 21:1-9 is that it is a ritual or, as David P Wright puts it in his chapter entitled *Ritual Theory, Ritual Texts, and the Priestly – Holiness Writings of the Pentateuch*, "it is a written artifact that describes or, more particularly, prescribes a performance" (Wright, in Wright, 2012: 197). Simply put, this means that the ritual in question is merely described or prescribed in the text, and there is no way of knowing for sure how the ritual might have looked if a performance could be reconstructed. Wright looks here at the texts of the Priestly literature of the Old Testament and the value of social theory in their study. He begins by stating the problems. He emphasizes that the application of social theory to the ritual texts of the Old Testament is limited because these texts are, at best, actually secondary sources of the rituals themselves (2012: 197). The study of any ritual should take this into account and be diligent to limit application to a loose attempt at a reconstruction of the performance of the ritual from a sociological perspective, only using the methodology heuristically (2012: 199). Complicating the study of ritual texts is the fact that, according to critical study, the genre of these ritual texts is convoluted and, while they present as ritual instruction they are, rather, a late record or even innovative construction of a ritual by the Priestly-Holiness (PH) authors written for their own time, with no more than a literary veneer of antiquity for the purpose of establishing authority. This contention is similar to Bernard Levinson's

theory of legal innovation (1998), although applied to the ritual rather than the legal material.

Positing a Neo-Babylonian beginning for the PH work, Wright shows the influence of Neo-Babylonia and the legal codes of Hammurabi on the ritual material and states that “whatever material it took up from authentic custom it repackaged and expanded in the service of present exigencies” (2012: 207).

Recognizing that rituals in the Pentateuch may have some origin in antiquity, Wright notes that their elucidation may only come from their study against the background of the whole Biblical history of Israel. He notes how those rituals have been changed over time and that these changes may shed light on the meaning (2012: 208). He notes further the fact that a number of the rituals appeared only as literature and were never practiced but, for example the institution of the priesthood in Leviticus 8-9, were created to imbue the authors with authority, meaning that the literature would have had the same effect as the performance of the ritual, had it ever been practiced even though it had not (2012: 209).

The warnings of Wright’s work are clear, although without clear guidance as to the appropriate methodology of the application of sociological study to the Biblical ritual texts. His work however underlines the weakness of a synchronic approach to the rituals of the PH authors, whose influence appears to come to bear on Deuteronomy 21:1-9 not least in the inclusion of the Priests in a ritual which neither requires nor employs them. Wright emphasizes the need to employ the tools of textual criticism prior to the application of any sociological model. The strata of the development of the ritual texts are the key to understanding their meaning and application in their final form and this will be a focus of the present study.

Unlike Bernard Levinson’s legal innovation, Nathan MacDonald, in his article “The Hermeneutics and Genesis of the Red Cow Ritual” (2012), posits a process of ritual innovation which uses the themes and language of ancient rituals to give credence to new and innovative rituals in the Pentateuch. Quoting Catherine Bell, he notes of rituals:

Any suggestion that they may be recently minted can give rise to consternation and confusion. Indeed ... part of what makes behavior ritual-like is the way in which such practices imply the legitimacy of age and tradition. (MacDonald, 2012: 369–70)

While MacDonald's work refers to the Red Cow ritual of Numbers 19, the same could apply to Deuteronomy 21:1-9. With this in mind, in the landscape of Deuteronomy with its paucity of ritual, it would be essential that any ritual would carry the credibility of antiquity. The fact that the 'eglā ritual *is* a ritual, means that the innovation and development of the ritual must take into account the way in which it has developed as a ritual into its final form.

Esias Meyer, in his article "Rituals and social capital in the book of Leviticus? An attempt at an interdisciplinary discussion", investigates the possibility that the Ritual component of Leviticus may be intended to develop what is called "Social Capital". Building on the model described by Rein Brouwer in his 2009 work, "Geloven in gemeenschap: Het verhaal van een protestantse geloofsgemeenschap", Meyer shows how the ritual elements in Leviticus build Social Capital through "bonding" (Meyer, 2013: 11). This fact is readdressed in the conclusion to propose that the 'eglā ritual might be intended to galvanize a community in its ethical attitude towards murder.

The liturgical use of the document for covenant renewal purposes is proposed by several scholars (e.g. von Rad, 1966: 17), but Christensen takes it to a new level with his detailed numerical analysis of the musical nature of the book (Christensen, 2001). He sees the setting of the book of Deuteronomy in the liturgy of worship, and in particular in a rhythmical and musical hymnody used in daily and festal rites. Christensen's careful analysis of the grammatical forms reveals an intricate poetical structure which is entirely believable. His specific comment on 21:1-9 places it along with 19:1-21:9 under laws on leadership. He calls the pericope didactic and formative, with its purpose that of highlighting the horror of murder (Christensen, 2001: 458). Some of his observations are useful, though not unique, but his interpretation of Deuteronomy as liturgical musical lyrics appears not to be useful in this study except that its repetition in lyrical fashion might serve to reinforce the horrific image. The notion that there is a theatrical element to the 'eglā ritual is compelling, and certainly opens up a possibility which may shed some light on its

validity and usefulness in an era when there is no longer any sacrificial system, temple or king.

Christensen's analysis of the book of Deuteronomy is enlightening, but appears to fail to answer the questions pertaining to the differences and even apparent contradictions between the Covenant Code and the book of Deuteronomy.

Deuteronomy 21:1-9 could possibly provide some clues to these questions due to its unique nature. What is useful in Christensen's work relating to the 'eglā ritual is the public and cultic, or worship setting of the book of Deuteronomy. I shall explore the public nature of the ritual and the ethically formative possibilities in the conclusion to this study.

Within the context of a precarious geo-political environment, the Assyrian threat from without and the threat of syncretism and apostasy from within, the scribes and priests appear to use the familiar texts of the past to reorganize the judiciary and the cult, and to regulate the monarchy. Levinson's approach steps beyond describing a process of faithful exegesis, to the programmatic subjection of received biblical texts to current political agendas. He all but makes the Deuteronomist a propagandist of the king, albeit a good king, with the objective of terrifying the nation into service of YHWH and King within the new cultic and judicial paradigm.

Deuteronomy 21:1-9 indeed bears the marks of antiquity and appears to have undergone a lengthy process on the way to its present form. Walter Brueggeman's approach (2001), within the canonical school, somewhat ignores this prehistory and looks at the text within the context of the broader faith-document of the Hebrew Bible and finds the meaning of Deuteronomy broadly derived from its place within that body. Within his understanding of the tenuous and contingent relationship between land and God's chosen people, the specific pericope of this study is seen as a ritual resolution of a loose end in the tidy land-God-people triangle (Brueggemann, 2003: 45). This approach, while compelling, ignores some of the issues on the cult, the priesthood and the monarchy, although it gives helpful insight into the context of the final promulgation of the Torah.

David P Wright, in his work *The disposal of impurity : elimination rites in the Bible and in Hittite and Mesopotamian literature* (1987a) calls this law an elimination rite.

He sees parallels with the “scapegoat” law of Leviticus 16 and finds its origins in magical offerings to gods of the underworld. He interprets the hand-washing as a rite of disposal of impurity into a place where it will not impact normal life, by using a detergent, the water. Wright studies the ‘eglā ritual in further detail in his article “Deuteronomy 21:1-9 as a rite of elimination” (Wright, 1987b). For Wright, the ritual takes the pollution caused to the land by the shedding of innocent blood, which is presumably in a location which would interfere with regular activity, and removes it to a distant and non-threatening location. Wright uses the methodology of both a comparison with Biblical rites and those of the Ancient Near East. The interesting part of Wright’s theory is that the detergent, water, is what carries away the pollution to the river and in turn to the distant sea. For Wright, the killing of the heifer is a symbolic reenactment of the murder in a remote location, but primarily, it is a “rite of elimination: the killing of the cow is a reenactment of the murder which removes impurity of bloodguilt to a place where it will not threaten the community and its concerns.” (Wright, 1987b: 403).

Bruce Wells, in his article “The cultic versus the forensic: Judahite and Mesopotamian judicial procedures in the first millennium BCE.” (2008) investigates the historical development of legal trial and uncovers some interesting evidence which corroborates Ziony Zevit’s work, discussed below, on the growth of the pericope. Essentially Wells looks at the three “O’s” of ancient judicial practice: the oath, the oracle, and the ordeal. The most primitive form, according to Wells, would have been the ordeal which would have involved some form of life-threatening experience which, if the accused survived, would prove their innocence. The judicial practice which finds its common occurrence in the Hebrew Bible is the oracle, which takes the form of the Urim and Thummim in Exodus 28:30. A supernatural means, ostensibly a trial by chance, is viewed as overseen by the divine and hence conclusive in the matter. Finally, there is the oath, which involves the invocation of the deity prior to a statement of innocence and non-complicity and includes a curse for a false oath. The statement or prayer in Deuteronomy 21:7 resembles this oath, but, as we shall investigate later, lacks the consequent curse. Wells’ contention is that “in both the biblical and Mesopotamian material, there appears to be a distinct movement toward a greater reliance on rational or empirical methods to decide cases.” (2008: 206). He states that the practice of the ordeal had ceased by the Neo-

Baylonian and Persian periods, but that the oath, while still used, no longer proved innocence and that the investigation frequently continued (Wells, 2008: 210–211). It is the oath which is of particular interest in this study and we shall look at the statement of innocence of the elders and its part in the ‘eglā ritual.

Callum Carmichael has some useful insights on the place of the pericope in the book of Deuteronomy using a rather more mishnaic approach. He does this in his article “A Common Element in Five Supposedly Disparate Laws” (1979). Based on thematic unity, Carmichael finds a commonality between the five laws in Deuteronomy 21 around the matters of life and death. The legal and cultic problem which arises in the five laws is that the two, life and death, are brought together in an inappropriate way. In the ‘eglā ritual in particular, death is found in the midst of the life of a community and its activities and poses a threat to that community. Their mingling causes the cultic problem which the law seeks to resolve. Bernard Levinson, quite curtly and, in my opinion unfairly, dismisses Carmichael’s work as “neo-midrashic eisegesis” (Levinson, 1990: 256). Carmichael’s observations provide a perspective worth considering, since his “eisegesis” seems similar to turn-of-the-era rabbinical practice of Midrash, pre-figured according to Louis Jonker, in the work of the Chronicler:

“Die werkwoord waarvan die woord afgelei is, darash (“soek”), word ook baie prominent in die boek gebruik. “Om die Here te soek” is een van die duidelike teologiese lyne in die boek. Met die karakterisering van die boek as Midrash is reeds te kenne gegee dat Kronieke een of ander soort uitleg wou gee van die ouer geskiedenis tradisie, soos vervat in die Deuteronomistiese geskiedenis” (Jonker, 2011: 137).

It is exactly this process of interpretation of earlier work by later interpreters which comes into sharp focus in the ‘eglā ritual due to its origins and final form.

Carmichael’s approach, while sharply criticized by Bernard Levinson, provides a helpful lens through which to view Deuteronomy 21:1-9 and allows for considerable and free reworking of the older material within thematic and programmatic bounds.

The work of Gerhard von Rad (1985), on the back of Albrecht Alt and Martin Noth, is foundational to understanding the purpose of Deuteronomy. The concept of a Deuteronomistic History and the influence of the same on the recording of Israel and

Judah's rise and fall (or is it fall and fall?) forms a skeleton onto which the flesh of any work on Deuteronomy must be added. These will appear both implicitly and explicitly throughout the study.

Gerhard von Rad, in his commentary on Deuteronomy (1966), sees the purpose of Deuteronomy 21:1-9 as the expiation of blood guilt. While the community is not literally held responsible for and thus guilty of, the death, their capacity to worship is threatened by the murder which is unpunished. Von Rad identifies the layered nature of the 'eglā ritual and hence the obvious Deuteronomistic addition of various elements. He notes the appearance of the Priests as a late "and not a particularly skillful addition" (von Rad, 1966: 135). Von Rad's observations point in the direction of redactional layers behind the text and the later work of the Inner Biblical Exegesis scholars develops these into useful theories which give some clues about the origin and development of the text in question as well as possibly answering the question as to what is going on in the ritual.

While Deuteronomy 21:1-9 is unique and appears not to be a reworking of a biblical law, the results of the literary critical investigation into the roots of the pericope as well as an investigation into innovations brought to this clearly ancient ritual may uncover not only the origins and meaning of the law, its purpose and intended place in the legal system of ancient Israel, but, it is hoped, will also provide some indicators as to how it might be understood and even applied in the current context.

The three stage process of development of Deuteronomy 21:1-9 posited by Ziony Zevit in his article "The 'eglā Ritual of Deuteronomy 21:1-9", includes an early Israelite collection of "B'arta" laws. These were pre-Deuteronomistic and, while probably receiving some Deuteronomistic work prior to inclusion in the book of Deuteronomy, were a collection of laws which existed in some form on their own, characterized by the phrase including the root בער. Zevit's model is a convincing one, which will provide a springboard for research. His investigation into the meaning of each of the clauses of the law will provide further grist for the exegetical mill in chapter three of this study (Zevit, 1976). Zevit takes on several of the authors mentioned in this study and, through a process of comparison with both Biblical and Ancient Near Eastern literature.

Thomas Römer's work, *The so-called Deuteronomistic History : a sociological, historical, and literary introduction* (2007) is possibly one of the most comprehensive works to be done on the Deuteronomistic History, since the term was defined and initiated by Martin Noth, published first in English in 1972 (Noth, 1981). Beginning with a thorough overview of the history of scholarship on the subject, he reformulates an integrated model of the history of the Deuteronomistic History including the pre-exilic late monarchy, or what he calls the neo-Assyrian era, the Babylonian era and the Persian era (Römer, 2007: 51). These three precede the final promulgation of the Pentateuch as Torah in the Second Temple period (Römer, 2007: 181). The three periods of reworking, according to Römer, reinterpret the material of the Deuteronomistic History in terms of the current geo-political environment of Israel (2007: 43). He applies his theory to several texts in which he shows the hand of the scribal elite in this reworking and shows how the various agendas of what he identifies as the Deuteronomistic School, existing over a period of at least four centuries, are expressed through this reworking.

Römer's work is groundbreaking and unifying, though seminal, and will no doubt stimulate a lot more work. It appears, however, that the three-tier model he proposes might be much more fluid than he presents it. The notion that a single "school" comprised the Deuteronomist is developed by the fact that it spanned several generations. A distinct three-phase reworking, while innovative, could, thus, even be a little too rigid since such a lengthy process of development might in the end, appear even more seamless than Römer would suggest, causing several nuances of the process to be missed altogether. This speaks only to the literary complexity of the Deuteronomistic History. This work is unique in that it posits a continuity of influence and authorship by identifying a single school of authors which, while spanning centuries, comprises a single strata of society in both the cultic and administrative spheres. This school originates, at least mythically says Römer, in 2 Kings 22 where Shaphan the secretary and Hilkiah the priest are identified with the discovery of the book of the law in the temple. He then links the families and descendants of these two, a scribe and a priest, with the development of the Deuteronomistic History and its authorship (2007: 55). This work will deeply influence the direction of this study and provide a new lens through which to see the 'eglā ritual which itself appears to have developed over several centuries.

In summary then, this study will take into account the results of early Biblical Criticism as well as scholarly comment on the verses in question, but will focus on the Inner Biblical Exegesis school and its methodology, employing the grammatical comparative methodology of Michael Fishbane, Bernard Levinson and others to see how the ancient material has been reworked into the corpus of Deuteronomy. It will take into account the recent work of Thomas Römer on the authorship/redaction of the Deuteronomistic History and will finally look at the final form of the text to attempt to uncover the intention of the final writers.

1.4. Research Problem

Deuteronomy 21:1-9 appears to include many of the themes of Deuteronomy. These include the land which will be possessed, the considerations of a settled community and a local leadership and judiciary overseen by a centralized cult. The strong emphasis on monotheism and the rejection of mystical or magical elements makes it appear particularly Deuteronomistic along with the presence of the Levitical priesthood. It is clear that thematically there is consistency with the overall tenor of Deuteronomy.

However, there are anomalies. These include the fact that we have here a judicial conundrum which, after what must be assumed to have been some investigation, has failed to yield an accused. The oddness of the prescription of the ritual under the supervision of local leaders is that such a difficult case should be referred to the judicial center as required in Deuteronomy 17:8. In the laws of Deuteronomy, the centralization of cultic activity is key to the programme, but what we have here is a sacrifice made in a local setting, against the prescription of Deuteronomy 12:11. Further to this, the priests only stand in what appears to be an oversight role and arrive late in the proceedings. The nature of the sacrifice, the washing of hands, the confession prayer and the purpose of the ritual are not immediately clear from the pericope.

These aspects need further exploration, which will be the aim of the present study.

1.4.1. Problem Statement

Taking into account the origins of this law and how it might have arrived at its final form, the present study will investigate the following problem: Are there any indications whether this law follows the overarching agendas of the Deuteronomist, despite the fact that it sits somewhat uncomfortably within the literary context of Deuteronomy?

1.4.2. The secondary questions

It is immediately obvious, even at first reading, that Deuteronomy aims to address new circumstances. The sermon of Moses looks forward to a life enjoying the land “the Lord your God is giving you to possess”. In these terms it would be necessary for the instruction to deal with the kind of settled life which the people of Israel would enjoy in the land and revise much of the legislation prescribed for a migrant people with a portable place of worship. But is the legislation of Deuteronomy merely neutrally addressing new circumstances in a responsive, if premonitory, way, or is there a deeper agenda which could be intended to be formative or transformative? Consequently, the first of the secondary issues to be investigated will be the question: *Does Deuteronomy have finite and clear overarching agendas?*

Secondly, it will be necessary to look at the ‘eglā ritual and attempt to uncover the specific emphases and agendas which might be revealed in the drafting and formulating of the legislation. If there are any clear emphases within the ritual we will need to ask the question: *What are the clear themes and emphases in the pericope in question?*

Thirdly, since the ‘eglā ritual appears so odd and without precedent in Biblical law, it is worth investigating its actual uniqueness and, in turn, the ways in which it might be shot through with the biblical themes evident not only in Deuteronomy, but in the Covenant and Holiness Codes. We could ask the question: *How do these themes and emphases intersect and are there any inconsistencies or even contradictions with other legal codes?*

Fourthly, since we are considering the work of the Inner Biblical Exegesis school and subsequent scholarship, it is imperative that we attempt to uncover some of the indicators of the development of Deuteronomy 21:1-9 from its origins to its final form. A good question to ask would be: *Do the answers to the above questions shed any light on the process through which this literature came into being?*

Several other questions will arise throughout the study which will be addressed as a matter of course, but we will focus on the questions and issues which will help to reveal the origins of the 'eglā ritual and the work which was done on it as it was given the peculiarly Deuteronomistic flavor of the Deuteronomistic legal corpus.

1.5. Methodology

This study will focus on Deuteronomy 21:1-9, but will begin with a wide-angle look at the themes in the book of Deuteronomy. Firstly, the investigation will take the form of a literature review and will attempt to identify primary programmatic agendas of the book of Deuteronomy, which may be linked to the reforms of Josiah. This will take into account the Deuteronomistic History as a whole, looking at the study of the Pentateuch in broad terms and the Deuteronomistic History in more specific terms, looking at recent scholarship and in particular the work of the proponents of the Inner Biblical Exegesis school and beyond. The work of Bernard Levinson *Deuteronomy and the hermeneutics of legal innovation*, on cultic centralization and local secularization in Deuteronomy, will be a starting point (1998), The recent work of Thomas Römer, *The so-called Deuteronomistic History : a sociological, historical, and literary introduction* (2007) will be a further reference point. His identification of the authors of the Deuteronomistic History and the literary development of the work will give the analysis some shape.

Secondly, a significant part of the work will be apportioned to exegesis. I will undertake a detailed translation using the standard lexical tools and, following the work of selected scholars, I will try to find answers to the questions raised in the nine verses. Here the stimulating article by Ziony Zevit (1976) will provide grist for the mill and I aim to provide a comprehensive account of the current scholarly work on the pericope. I will also refer to Michael Fishbane's work on inner-biblical exegesis and

take Bernard Levinson's careful work on the lemmas of the Covenant Code as a clue to the redactional layers of the text. The aim is to address each line of the law and respectfully attempt what von Rad alluded to when he wrote, as quoted by Ziony Zevit, that, "by removing the characteristic Deuteronomistic additions, one could reveal an original pre-Yahwistic text which could be analysed in order to discover the original purpose of the ritual" (Zevit, 1976: 377). This will not be done in the traditional source-critical way, but rather for the purposes of uncovering the exegetical process used by the authors in re-working the ancient ritual into Deuteronomy.

Thirdly, to bring the two together, I will highlight the intersection of the two previous sections. The primary question will be whether the themes in the pericope in question follow those of the book of Deuteronomy and, if there are anomalies, I will make an attempt at an explanation. It is possible, that, in reformulating the 'eglā ritual for its inclusion in the legal corpus of Deuteronomy, the authors hastily borrowed a ritual from another ancient near Eastern context and included it clumsily in Deuteronomy. As we will see, it is more likely however, that the authors used the bones of an ancient ritual and shot it through with the Deuteronomistic spirit so that it would accord with the Deuteronomistic programme.

Ultimately it is hoped that the study will shed some light on the way that the Deuteronomistic authors applied their exegetical principles to what appears to be a non-Israelite ritual, in order to make it fit with the reform agendas of the time.

I would like to, and generally prefer to, approach the Biblical texts in their final form, accepting that the final form is all that we reliably have. The way that texts have been passed down for millennia since they were sealed in the canon of Hebrew scripture is the only way we can read them, but any approach which ignores the possible history behind, context of, and process involved in the original promulgation of any Biblical text fails to do it the justice which is fitting of such a rich and diverse faith document. "The Bible says it" might be a faith-filled approach to the Bible, but it is also a fair question to ask what the people who wrote it down were *trying* to say. I will therefore look at the process behind the formation of the 'eglā ritual with the enquiring mind given by the God whom it professes, but with the respect and humility

due a faith document which has faithfully been read by wise and devoted people for millennia.

1.6. Layout and Chapter outline

I have explained how I arrived at this text for the study, what the focus of the study will be, what assumptions I make at the outset, what tools will be chosen for the study and where I aim to end up. The journey of the study will take place through chapters 2 to 5 (the conclusion) in the following way:

Ch. 2: A Deuteronomistic agenda?

This chapter will investigate the motivation behind the promulgation of Deuteronomy searching for overarching themes and agendas. The question asked will be: "What did the Deuteronomist aim to achieve?" Here we will focus on three clear agendas of the Deuteronomist which form a background to the Deuteronomistic History and will provide the framework for the study.

Ch. 3: The law of Deuteronomy 21:1-9

A detailed exegetical study, with a translation, will unpack each element of the pericope, attempting to uncover its uniqueness and its history and origin. Here we will take into account as many commentators as possible in trying to understand the various confusing and apparently anomalous elements.

Ch. 4: An anomaly within the Deuteronomistic corpus?

This will compare the results of Chapter 3 with those of Chapter 2 and consider the consistency of Deuteronomy 21:1-9 with the entire legal corpus of Deuteronomy. In line with the practice of the Inner Biblical Exegesis school and in an attempt to do what Gerhard von Rad suggested, I will provide a reconstruction of the 'eglā ritual with footnotes indicating how the pericope grew to its final form.

Ch. 5: Conclusion:

Here the chief question will be, “can this text be preached in the 21st century pulpit?” The hope is that the exegetical methodology of the biblical writers which will be investigated, will provide some keys to understanding and applying the text in the 21st century. Even if some prefer not to find a timeless meaning in the ancient texts, I will suggest a possible meaning which may have been intended by those who knew that the religion of ancient Israel would be underpinned by text and not temple in the Second Temple period.

Chapter 2

The Deuteronomistic Agendas

2.1. Agendas or themes?

Before investigating the apparent agendas in the book of Deuteronomy and specifically in Deuteronomy 21:1-9, it must be established that there was an author, or several authors, or even a group of authors, whose aim it was to do more than simply record a neutral history. This question of the author of Deuteronomy and the subsequent books, the “Deuteronomist”, and his¹ scope of influence on the Hebrew Canon has been at the center of much debate in the last two centuries.

Furthermore, if Deuteronomistic agendas are in question in this study, the premise is that there are indeed *agendas*, as opposed to *themes*. Several themes emerge which are evident throughout what has been called the Deuteronomistic History, from Deuteronomy through 2 Kings, but the question to be addressed here, is whether or not the Deuteronomist had a specific outcome in mind when he compiled the book of Deuteronomy. Themes are taken here simply to be theological categories into which the author arranged the material or even perspectives through which the history of Israel is seen. Themes are not self-consciously imposed onto the work by the author, but rather they are natural headings which make the history easier to understand. Themes tend to be neutral and responsive to the material and simply a way of grouping events and thoughts so as to provide a theological framework. *Agendas*, on the other hand, have an altogether more deliberate function in the work of the Deuteronomist and its desired outcome, that is: it is designed to bring about some particular response or even behavior in the reader, from something as simple as influencing or critiquing a world-view, to the transformation of a political, religious or judicial system or even a society. Bernard Levinson, in his work

¹ The term Deuteronomist is one which has received much attention in current debate. It is outside the scope of this research fully to record this debate and the generic use of the term “Deuteronomist” will include the understanding that he (a pronoun used for convenience and not to denote the gender of the writer(s)/editor(s)) quite probably was a group or school of Deuteronomistic authors and redactors who wrote and compiled the material over several centuries (cf. Römer, 2007).

Deuteronomy and the Hermeneutics of Legal Innovation, identifies Deuteronomy as “a means of cultural transformation” (1998: 16). He places the work squarely in the domain of propaganda, with political and theological objectives. To say, then, that the Deuteronomist had certain agendas, is to say that he wrote with certain express outcomes in mind, and those were to transform certain aspects of national administration, judiciary, religion and society, to name a few.

In his small, yet influential work, *The Deuteronomistic History* (Noth, 1981), Martin Noth listed and discussed the major theological themes of the work. He states that the Deuteronomist (Dtr.), in writing his history, “intended it to teach the true meaning of the history of Israel from the occupation to the destruction of the old order” (Noth, 1981: 89). This “intention” of the Deuteronomist (Dtr.) might be called an “agenda”, since, if Noth’s position is taken, then the history has the agenda of explaining the events of history and especially the exile, in terms of the theology of the Deuteronomist. Such a tendentious history is at the beginning of the continuum of what is the focus of this study. More than simply explaining events of the past, I aim to investigate how the Deuteronomist picked up on certain themes of the past and reworked them into clear-cut agendas which were aimed at national transformation at various levels. To begin with it will be helpful to understand recent scholarship on the Deuteronomist, focusing the recent and insightful work of Thomas Römer (Römer, 2007).

2.2. The Deuteronomist and the Deuteronomistic History: A brief history of recent scholarship.

Martin Noth posited an early exilic, and neutral Deuteronomist., who undertook a compilation of the history of Israel from several extant sources as “the independent project of a man” (1981: 99), an individual, who wrote after the release of Jehoiachin from Babylonian prison, in around 560 BCE. The aim of Noth’s Deuteronomist., was to explain the events of recent history in terms of the punishment of YHWH for the failure of Judah to uphold the law of Deuteronomy (1981: 99). This approach absolves the Deuteronomist of any allegiance to the state or cult, making his evaluation purely explanatory or reflective.

Dispute regarding the single-author model is older than the work of Martin Noth. It dates back to the 19th century CE and the work of C Steurnagel. Even earlier than that, Heinrich Ewald had posited a multi-layered redaction of Deuteronomy through Judges with the identification of the redactor as one he called the Deuteronomist. He however excluded his Deuteronomist from and involvement in the Samuel-Kings works (Römer, 2007: 18).

Julius Wellhausen's famous documentary hypothesis also recognized various stages of redaction of what had come to be called the *Hexateuch*, from Genesis to Joshua. Wellhausen, however, limited the work of the Deuteronomist almost solely to the book of Deuteronomy, although he recognized Deuteronomistic texts elsewhere in the Hexateuch.

By the time Martin Noth had written his *Überlieferungsgechichtliche Studien*, A Jepsen had already been working on his multi-layered theory for the composition of the book of Kings. He posited an exilic two-redactor model but his work would be eclipsed by that of Noth and it wasn't until the work of Frank Cross and Rudolf Smend that the multi-layered redaction model came to center-stage in the debate. Martin Noth abandoned the notion of a Hexateuch which had enjoyed scholarly consensus since the work of Wellhausen, in favour of a Tetrach (Genesis to Numbers), and what he called the *Deuteronomistic History*, from Deuteronomy through to 2nd Kings, composed by a single author. That Noth's work was influential is evidenced by the reaction to, and discussion of his conclusion by almost every scholar who followed him, as Steven Mckenzie states, " The acceptance of this viewpoint has continued such that , to the extent that any position in biblical studies can be regarded as the consensus viewpoint, the existence of the Deuteronomistic History has achieved almost canonical status" (Freedman *et al.*, 1992: 161).

Following Martin Noth, scholars began to notice the manner in which the Deuteronomist writes about Josiah as the greatest king since David, reforming worship in Judah, observing that there are optimistic texts within the Deuteronomistic History which would sit uncomfortably after the exile (Römer, 2007: 27). Römer notes elsewhere that Gerhard von Rad posited that the Levites of the post-exilic times were in fact the Deuteronomists and soon scholarship opened up to the notion of a complex and extended period of redaction became plausible (Römer, 2000: 2).

Frank Moore-Cross, recognized the shortcomings in Noth's hypothesis. He noted that the promise of an everlasting dynasty to David and the lack of a, typically Deuteronomistic, concluding speech, pointed somewhere beyond a pessimistic and purely exilic redaction (Römer, 2007: 27). He responded by positing a double-redaction of the Deuteronomistic History. He argued for one redaction at the time of Josiah (7th century BCE) and another in the Babylonian exile, a theory which gained traction mainly in the United Kingdom and the United States of America. This multiple redaction theory was further fragmented by the "Göttingen school" under the initiation of Rudolf Smend who argued against the 7th century redaction and for a double exilic redaction at the hand of a "Nomist" and an "Historian" (Römer, 2007: 30). This departure from a single redactor/author model led to furious tensions in the academic world and eventually some scholars reverted to single redactor model, notably John van Seters and Stephen McKenzie who argued for a core of Deuteronomistic work in the Deuteronomistic history, to which later editors added, accounting for the contradictions (Römer, 2007: 31–32). This approach took little account of the Deuteronomistic texts elsewhere in the Pentateuch and the Prophets, but argued again for the unity of the Deuteronomistic History and the creative, interpretative work of the Deuteronomist (Freedman *et al.*, 1992: 164–167).

More recently, the study of the Deuteronomist's work began to find Deuteronomistic texts in other places in the Pentateuch, leading to Konrad Schmid's theory that the history of Israel, right from Exodus through 2 Kings is Deuteronomistic. Thomas Römer issues a caution, warning against the liberal identification of Deuteronomistic texts by saying that in order to identify a text as Deuteronomistic, "the only way to avoid arbitrary definitions is to combine stylistic and ideological criteria" (2007: 33). He points out the, "multiplication of Deuteronomistic layers, is already a real challenge to the idea of a coherent Deuteronomistic work" (2007: 36). Going on to meet the challenge, Römer applies the combination of "stylistic" and "ideological" criteria to, among other texts, Deuteronomy 12, identifying three different "viewpoints" leading to a theory of three-fold redaction over an extended period of time.

Thomas Römer, attempting to reconcile the breadth of study on the Deuteronomistic History, notes the extent of influence of the Deuteronomist beyond the book of

Deuteronomy, in both the Pentateuch and the Prophets, asking whether the Deuteronomistic History is in fact historiography in an objective or neutral sense, or in fact narrative history which is neither coherent nor self-consciously unified, but the work of a group, or “school” of scribes working over several centuries (2007: 35–38). The solution appears to lie in uncovering the “who” and “when” of the Deuteronomist and, from there, looking at the compilation, themes and agendas. Römer, arguing from the position that literacy, in the 8th to 6th Century BCE, was not widespread and that the intelligentsia were, most likely, the scribes of the royal court, then posits a Deuteronomistic “school” or “movement” which existed and wrote the Deuteronomistic history from as early as the 7th century BCE (2007: 55). This early edition (ca. 672 BCE), argues Römer was limited to a few texts amounting to a parallel to the Ancient Near Eastern (ANE) loyalty oaths which included a legal programme of the “reorganization of the Judean State in order to provide more power at its center” (2007: 75–81). The scribes met the challenges of each age with a new interpretation of older material through redaction, re-working of older material and writing of new material. From there, Römer posits a multi-stage redaction process from the Assyrian, through the Babylonian and Persian periods, each one meeting the challenges of the day and giving rationale for the failures of the past. Various examples are cited but that of 2 Kings 22-23 is illustrative. The earliest edition is aimed at removing the Assyrian cult influence in Judahite religion, with the above loyalty oaths and associated curses aimed at reinforcing YHWhistic monotheism and allegiance to YHWH rather than to Assyria. Towards the reign of Josiah and before the events of 597 and 587 BCE, the central theme is the centralization of cult and administration and the legitimization of Jerusalem as that center. In the early exilic period, the monarchy becomes the focus with the collapse of Judah explained in terms of divine judgment. Finally, in the Babylonian and Persian era, the emphasis on the law was intended to replace the Temple with the book. Included here is what Römer calls the Foundation Myth of the Deuteronomistic School, which is the discovery of the “book of the law” in 2 Kings 22-23 (2007: 55).

Thomas Römer’s enlightening study places the families of “Hilkiah the Priest” and “Shaphan the Secretary” (2 Kings 22) at the center of the Deuteronomistic propaganda machine and traces their work from Josianic times down well into the Persian period. He further links Shaphan to the Royal elite as an historian. Whether

or not Römer's assertions are entirely accurate, the notion of a long process of scribal authorship allows for the possibility that, over the course of the formation of the Deuteronomistic history, there are various agendas and propagandistic programs which are applied to the narrative history as well as the legal material of the Deuteronomistic History which are aimed at national transformation.

Römer's Deuteronomist is active throughout the Deuteronomistic history, from Deuteronomy to 2 Kings, so that, while he doesn't deny the existence of pre-Deuteronomistic source material, the Deuteronomist is the group primarily responsible for the final form of the entire Deuteronomistic history.

On the issue of the place of Deuteronomy in the Deuteronomistic history, E.W. Nicholson writes, in his work *Deuteronomy and Tradition*:

"The two styles, that of Deuteronomy and that of the Deuteronomist, are basically identical. The differences amount to no more than an occasional variation in vocabulary or short phrase and minor nuances in syntax. In view of this it can only be concluded that this unity of styles belongs equally to both circles, the Deuteronomic and the Deuteronomistic." (Nicholson, 1967: 109)

Thomas Römer, however, goes a step further, to identify the work of the final form of Deuteronomy with the work of the Deuteronomist. While the material is indeed older, he sees the work of the Deuteronomist at every level in the book of Deuteronomy, with Deuteronomy through 2 Kings "tightly bound, to the extent that together they explain why Israel and Judah could not escape from the fate that was announced by Moses from the very beginning" (Römer, 2007: 41).

If Thomas Römer posits a theory of the lengthy and progressive development of the Deuteronomistic history, the "school of inner-biblical exegesis", which ostensibly began with Michael Fishbane (1985), looks at the *purpose behind* this process in some detail. Focusing in on the legal material, the particular interest of this study, he begins with the assertion that the laws of ancient Israel were never intended to be used in court as judicial documents. Rather, they were the "literary achievements embodying cases exemplary of the wisdom and authority of the lawgiver (human in Mesopotamia; divine in ancient Israel). Moreover, as with ancient Near Eastern legal materials, there is virtually no explicit evidence in ancient Israel that jurists used the

rules preserved in its legal corpora as precedents or guides in the handling of specific cases” (Fishbane, 1985: 231). As we have seen in chapter 1, Fishbane posits a process of development of the legal material which involves what he terms “inner-biblical exegesis” where texts with a received authority are reinterpreted for new circumstances. The *tradtum* of received text undergoes a process of *tradtio* to render it useful in the new time or situation, or simply to elucidate or clarify meaning. This theory accounts for the insertion of explanatory comments, new interpretations and the addition of entirely new legal prescriptions, but, according to Bernard Levinson, fails to account for the contradictions in the text of Deuteronomy and, in particular, its departure from the laws of the Covenant Code. Where Michael Fishbane argues that Deuteronomy is a recording of existing oral laws and a reinterpretation of the older codes (1985: 104), Levinson argues that the authors of Deuteronomy are using the legal language and ethos of the Covenant Code to lend historical credibility to the new laws of a new legal programme (Levinson, 1998). Arguing that the Deuteronomist had a hand in the final edition of the book of Exodus, he finds the framework of inner-biblical exegesis inadequate to explain the radically different emphasis of the Deuteronomic code over against the Covenant Code. He calls it “a major irony of literary history that Second Temple editors incorporate both the Covenant Code and the legal corpus of Deuteronomy into the Pentateuch. In doing so they preserve Deuteronomy alongside the very text it sought to replace and subvert” (Levinson, 1998: 153).

Levinson argues for a clear and subversive purpose in the legal corpus of Deuteronomy:

“The authors and editors of Deuteronomy, from the beginning, worked deliberately with texts to transform other texts, to articulate a far-reaching programme of cultic, judicial, administrative, ethical and theological innovation, to advance a new understanding of the past, and to create a new future for the nation. The method illuminated here can equally illumine the study of biblical narrative: the study of any text must include a clear sense of its revisionary target” (Levinson, 1998: 156)

It is this revisionary target which we will seek to uncover in the work of the Deuteronomist, particularly in the book of Deuteronomy itself, in order to find how the pericope of Deuteronomy 21:1-9 reveals layers of editorial work which include not

only the recognition of the social, political and religious structures, but align with the overall Deuteronomistic program in specific areas.

To conclude, regarding the authorship and provenance of the Deuteronomistic History, a so-called Deuteronomistic school of author/redactors compiled and edited the Deuteronomistic History from the time of Josiah, in approximately 630 BCE, until the late Persian period. The late and strong priestly influence then resulted in the promulgation of the Torah, or Pentateuch as we know it in the late Second Temple period, with the break inserted at the end of Deuteronomy, which, according to Römer, was a diplomatic maneuver, so as not to present an adversarial front to the Persian empire (Römer, 2007: 180–1). The end of the Deuteronomists and the Deuteronomistic History was the beginning of Torah and the rabbinical milieu, during the time of the Second Temple. It was the point at which a received Torah appeared to have been set and further writing seen as somewhat pseudepigraphical and largely interpretative, even freely so, in nature.

2.3. The Agendas of the Deuteronomist

Having looked at Thomas Römer's reconstruction of the Deuteronomistic History it is worth noting that Bernard Levinson, in his focused study of the legal material in Deuteronomy, *Deuteronomy and the Hermeneutics of Legal Innovation* (1998), makes the comment that too detailed a reconstruction of the redaction history of a text like Deuteronomy, often yields "self-generating" results (1998: 13). Each new emphasis or problematic turn of theme, phrase or apparent agenda could be ascribed to one or another exegetical or redactional point of view or period. The complexity of Deuteronomy to 2 Kings, makes any such study in danger of exceeding academic critical mass and becoming unhelpful by virtue of exponential fragmentation. Levinson compares the various recent approaches to biblical scholarship, looking at the canonical approach, championed by Brevard S. Childs and, more recently, by Walter Brueggemann. His sharp criticism of the approach is that it "assumes that the canon was a source of cultural identity that could be mined during later times of spiritual crisis" (Levinson, 1998: 14). The proponents of canonical criticism, writes Levinson, recognize the fluid way in which biblical writers

reinterpret material for a new situation, but render it as purely seeking to offer comfort, thus failing to take into account both the deliberate reworking or rewriting of previous material so as to supersede it (1998: 14).

Against the school of inner-biblical criticism, Bernard Levinson retorts that it “does not provide a satisfactory model to describe the achievements of the authors of Deuteronomy” (1998: 15). Levinson’s methodology is to compare the language used in Deuteronomy with that of the Covenant Code with special reference to the texts which are on the same subject but seem to depart from, or even contradict each other. Taking the law allowing worship at any local sanctuary in Exodus 20:24, he shows how it is effectively repealed by the enactment of Deuteronomy 20:13-15. He makes a similar study of the Passover instructions in Exodus 12 and Deuteronomy 16. The conclusion is that, carefully noting the reworking of the specific phrases in Exodus, to give an entirely new, and even contradictory meaning in Deuteronomy, the legislators of Deuteronomy have promulgated a legal corpus which supersedes the earlier material while couching it in language which is familiar, making it easy to receive.

Bernard Levinson’s approach defends only one possibility in the continuum of biblical research on the issue of the promulgation of Deuteronomy. It appears however, that it would be better to take a more inclusive stance to the history of recent approaches. The canonical critics give the reader the benefit of reading a section of the Bible as a unit. Levinson might protest that such an approach belies the reality of formation, writing that “it is anachronistic to speak of a “canon,” in the conventional sense in ancient Israel” (1998: 14). However, there was a time, much later in history than the book of Deuteronomy, when the books of the Pentateuch were received as a unit, the Pentateuch or Torah. It seems, then, that a much more inclusive approach to the study of the Deuteronomistic history, in terms of scholarly methodology, might yield a fuller sense of any text.

For this reason the approach taken in this study, will recognize the work of Levinson in that I will attempt to identify how Deuteronomy 21:1-9 has been reworked from its origins, presumably, as we shall see as an Ancient Near Eastern magical rite, into the Deuteronomistic law in its final form. Employing the work of Thomas Römer, I will seek to identify how the text may have grown over the three editorial periods of the

Deuteronomistic history. Ultimately the aim is to uncover how this text has been reworked from its early and pre-Deuteronomistic form, to accord with the agendas of the Deuteronomist. Along the way, both the canonical and the midrashic approaches of Childs et.al. and Callum M Carmichael, will be given a cursory look in order to find clues as to the Deuteronomist's reason for including the rite and themes which are consistent with other Deuteronomic texts, which might reveal the agendas.

Taking into account the work of Thomas Römer, recognizing the three stages of redaction of the Deuteronomist, and noting the specific program of reformation posited by Levinson, I will now look at the specific areas of this reformation in the life of ancient Israel where the Deuteronomist could be said to have had an agenda. Bernard Levinson notes the categories of "cultic, judicial, administrative, ethical and theological innovation" (ibid 1998). I will therefore take the three areas of the cultic, judicial and administrative as the three to cover in this study because both the ethical and theological form the framework within which the former are seen. We now proceed to a detailed look at the Deuteronomist's agenda in these three areas.

2.3.1. The Monarchy

In his insightful article on the subject (Levinson, 2001), Bernard Levinson outlines the main points of continuity and discontinuity of the Judean conceptualization of the monarchy with that of the Ancient Near East. By way of introduction he states that this programme of redefinition of the monarchy and its authority is:

"part of a larger programme whereby the authors of Deuteronomy redefine the jurisdiction of each branch of public office, from judicial administration through kingship and priesthood to prophecy itself, systematically subordinating each, first, to the requirements of cultic centralization, and, second, to the textual authority of the Deuteronomic Torah" (Levinson, 2001: 512).

The first mention of an actual king of Israel is in 1 Samuel 8:5. In the Deuteronomistic history, however, the first mention of the monarchy is in Deuteronomy 17, where the lawgiver outlines the requirement for the future king of

Israel. Both of these contexts give a particular slant on the nature and office of king which is not wholeheartedly committed to the notion of a sovereign ruler.

¹⁴ When you have come into the land that the Lord your God is giving you, and have taken possession of it and settled in it, and you say, “I will set a king over me, like all the nations that are around me,” ¹⁵ you may indeed set over you a king whom the Lord your God will choose. One of your own community you may set as king over you; you are not permitted to put a foreigner over you, who is not of your own community. ¹⁶ Even so, he must not acquire many horses for himself, or return the people to Egypt in order to acquire more horses, since the Lord has said to you, “You must never return that way again.” ¹⁷ And he must not acquire many wives for himself, or else his heart will turn away; also silver and gold he must not acquire in great quantity for himself. ¹⁸ When he has taken the throne of his kingdom, he shall have a copy of this law written for him in the presence of the levitical priests. ¹⁹ It shall remain with him and he shall read in it all the days of his life, so that he may learn to fear the Lord his God, diligently observing all the words of this law and these statutes, ²⁰ neither exalting himself above other members of the community nor turning aside from the commandment, either to the right or to the left, so that he and his descendants may reign long over his kingdom in Israel. (Deut 17:14-20 ESV)

Deuteronomy 17:14-20, serves to limit, firstly, the nationality of the king. This might seem obvious, but might also be seen in the light of the Deuteronomist theme of religious separateness (12:29-30). The lawgiver then proceeds to limit the office of the monarch beyond what might be expected. There is a prohibition of the acquisition of excess numbers of horses, perhaps linked to a veiled reference to foreign alliances; a limitation on the marital exploits and then the regulation of accumulation of wealth. These three do not sit well with the notion of a sovereign ruler, but the next maneuver of the lawgiver is even more interesting. The king is not to be the supreme legislator, but rather the custodian of the law and subject to it.

Much later in the Deuteronomistic History, the kings are evaluated according to a standard which sees them listed either as faithfully following the law, or doing evil in the eyes of the Lord. In general these evaluations appear to be in line with the Deuteronomic law code, but on closer examination, there are some inconsistencies and these could be telling regarding the Deuteronomists agenda regarding the Monarchy. At this point it would be worth looking at the uniqueness of Israelite

kingship and the way in which the Deuteronomist portrays the ideal king, both in the law code and in the History.

Bernard Levinson, in his article “The Reconceptualization of Kingship in Deuteronomy and the Deuteronomistic History's Transformation of Torah” (2001), outlines the main points of continuity and discontinuity of the Israelite conceptualization of the monarchy with that of the Ancient Near East. In ancient near Eastern monarchies, he identifies six essential characteristics. These are:

- i. The divine adoption of the king as the son of god;
- ii. Special judicial insight granted by the deity;
- iii. The imperative to administer justice;
- iv. The remission of debts and maintenance of equity, especially upon accession to the throne;
- v. Patronage of and defense of the cult;
- vi. Military leadership (Levinson, 2001: 512–516).

From here, Levinson goes on to show that even these common elements are reconfigured in Deuteronomy.

Beginning with the first mention of the Monarchy in Deuteronomy 17:14-20, it is clear that the Deuteronomist gives the King of Israel a unique relationship to **הַתּוֹרָה הַזֹּאת**.

He is restricted in terms of the law regarding his lifestyle, succession and obedience to it. In this short pericope, instead of the king being presented as the law-giver as in other Ancient Near Eastern contexts, he is made the addressee of the law and very much subject to it. It appears that the king's authority and sovereignty are curtailed and subjected to the written law, but furthermore, that the king is the custodian of divine law and hence somehow responsible for the rule of law in the nation and the future prosperity and even survival of the nation.

Having devolved the sovereignty of the monarch thus, the law then proceeds to diminish the judicial role of the king. Deuteronomy 16:18-20 appoints a local judiciary which, Levinson notes, is necessary in the light of the decommissioning of local shrines but where the local judiciary is not able to make a judgment due to insufficient evidence or, perhaps, direct involvement or undue influence, the case is

not referred to the king, as in other Ancient Near Eastern cases or to the superior divine insight of the king as illustrated in the Deuteronomistic History (cf. 1 Kings 3:16-28), but to the central sanctuary (Deut 17:8-13). Despite the responsibility of the king to see to the maintenance of justice, he takes no part in the judiciary. The Deuteronomist thus excludes the king in matters judicial.

The king is also excluded, in Deuteronomy 20:1-9, from the process of mustering the troops for battle. He doesn't feature at all and the priests are called on to prepare for war, with the generals being appointed directly by the priests, giving the monarch no authority in matters military. Again, Levinson points out that this is inconsistent with ancient Near Eastern parallels and further strips the monarch of his typical vested powers (Levinson, 2001: 525).

In terms of the cult, the usual position for the ancient Near Eastern king is that he would be patron of the cult and head of the religious system. In Deuteronomy, however, the regulations regarding the cultic and religious sphere exclude the king altogether. They are given directly to the people and "the monarch's one contact with a religious official is to arrange for a copy of the Deuteronomic Torah to be written for him" (Levinson, 2001: 523).

The position of the king in Deuteronomy then, appears to be stripped of the honour and power typical of kings of the time and he becomes somewhat of a figurehead, with no judicial, military, or cultic responsibilities or special powers.

The role of the Deuteronomistic school in this is a matter of some debate. In favour of an exilic date for Deuteronomy 17:14-20, is the fact that the legislators would have been producing a law which curtailed the very king who was in power. If the law was promulgated in the exilic period, then there was no actual king ruling in Israel, so the law becomes little more than a standard by which to evaluate the kings of Israel retrospectively. However the Deuteronomic laws, which exclude the monarch from processes which his Ancient Near Eastern counterparts would control or at least oversee, also pose a problem, and these include legislation on the judiciary, the military and the cult, where, for example, the feasts are neither instigated by nor presided over by the king, for the law addresses the people directly. Possibly plausible is the suggestion by Levinson, that earlier scribes, disillusioned by the reign

of Manasseh, sought to strip future monarchs of their power to avoid a repeat, but it still begs the question why Josiah would endorse such a legal corpus and then promptly disobey it by presiding over cultic procedures and ceremonies (Levinson, 2001: 527). Thomas Römer identifies the finding of the book of the law, in 2 Kings 22-23 as a “founding myth” of the Deuteronomistic school (cf. Römer, 2007: 53). If this book of the law is to be identified with the book of Deuteronomy, then king Josiah, who finds the book, acts against its content. The notion that the book-finding was a construct of a much later group, rather than an historical account of the king literally finding the book, does overcome the disconnect between the king’s alleged defense of and passion for the “book” and his behavior. Bernard Levinson writes: “The Narrative core of 2 Kings 22-23 is the work of a pre-exilic editor who sought to legitimate the introduction of a new set of laws and to sanction Josiah’s cultic and political initiatives” (1998: 10). The problem of the introduction of a law which curtails the power of the king and yet is received well by that king does not need to be spelled out.

All of these questions, and there seem to be many more questions than answers, are not within the scope of this study, but the role of the king according to the Deuteronomists who compiled the final form of Deuteronomy is one which is divested of its characteristic Ancient Near Eastern judicial, military and cultic role.

Transformation in the particularity of Israel’s monarchy compared to the scope of jurisdiction within other Ancient Near Eastern legal corpora² makes this noteworthy in that the king is not making the law or even exercising it, and is reduced to a figure-head (Levinson, 2008: 78). Along with the separation of the monarch from the military, judiciary and the cult, this programme within the corpus of Deuteronomy appears to be a clear agenda. If this is the case, then Thomas Römer’s work resuscitates the notion proposed by Frank Cross that the Deuteronomistic work was propaganda aimed at diminishing the power of the king and increasing the influence of the literate elite. Römer however would not assign the law of the King in Deuteronomy 17 to Josiah’s time, since there are no Ancient Near Eastern parallels

² Bernard Levinson (2008: 76–77) compares this pericope in Deuteronomy 17:14-20 to the claim of Hammurabi to have been commissioned by Marduk “so that the strong might not oppress the weak, to shine forth as the sun to the black haired ones, and light up the land” (2008: 76). The comparison highlights that the king of Deuteronomy would not even have ultimate responsibility at this level, but that it would be transferred to the Temple.

at the time (Römer, 2007: 80). Of course the programme of the Deuteronomist regarding the monarch was, according to Levinson, secondary to that of the cult, to be dealt with below (1998: 21).

2.3.2. The Judiciary

The law in Deuteronomy concerning the Judiciary is found in chapters 16:18-20 and in 17:8-13. The former allows for a local judiciary while the latter delineates the appeal and referral process in the event that the local judiciary was incapable of trying the case.

In his work, *Deuteronomy and the hermeneutics of legal innovation* (1998), Bernard Levinson posits as the primary aim of the authors of Deuteronomy, the centralization of the cult: “Everything begins, of course, with cultic centralization, which transformed the sacrificial worship of Yahweh” (1998: 21). He goes on to note that the innovations of the authors of Deuteronomy then cascade into other areas of social life and become a programme of overall transformation. This programme then extends to the judiciary, which is directly affected by the removal of the local shrines, leaving the Levites in the outlying regions without a specific function in the cult and thus unemployed, creating a “judicial vacuum in the provincial cities, and the law providing for the appointment of state judges in every city was apparently designed to fill it” (Weinfeld, 1972: 234). One might expect, under these circumstances, that the king would deputize judges in the regions to expedite justice, but the book of Deuteronomy circumscribes the monarch by addressing the people directly in this regard in Deuteronomy 16:18 “You shall appoint judges and officials throughout your tribes, in all your towns that the Lord your God is giving you, and they shall render just decisions for the people.”

In dealing with this judicial vacuum, the Deuteronomist makes the central temple the supreme court for all matters judicial, while providing for what Levinson calls “local, professional judicial officials” (Levinson, 1998: 117) who deal with local matters. This reorganization of the judiciary, after the Covenant Code had allowed for a local cultic

judicial function³ denies the monarch “his most prestigious, and thus most jealously guarded bailiwick” (Levinson, 2008: 76). Whereas in Chronicles (2 Chr 17:7-9), the king sends emissaries to teach the law and then in 2 Chr 17:19, he establishes the judiciary, in Deuteronomy the judiciary is independent of the king, he neither participates in nor establishes it.⁴

Who exactly the “judges” of Deuteronomy 16 were is a question worth investigating here. In a monarchy where a vestigial clan structure still persisted in the provinces, the judiciary would be fulfilled through the local leadership, probably the clan elders. Mark Leuchter (Leuchter, 2007) has Deuteronomy 16 replacing the elders in the judiciary with שֹׁפְטִים וְשֹׁטְרִים which he translates as “judges and scribes”, after Alexander Rofé (Leuchter, 2007: 420). Based on the rationale that the centers of literacy in rural Judah of the time would have been, exactly, the cultic centers, he argues that the judges and scribes were the Levites. He does however allow for the inclusion of the clan elders as a token of continuity, but only in a footnote.

Having replaced the clan-court with a low level cultic court, the law of Deuteronomy then sets up, according to Leuchter, the court of appeal for cases beyond the scope of the written law. His crafty study of Deuteronomy 17:8-13 shows a process of adjudication by the central priesthood which serves to create new ordinance to be instituted at a local level by the local Levites (2007: 422).

Bernard Levinson calls the process of redefinition of the judiciary, outside of the “bailiwick” of the monarch, a blueprint for a “Torah Monarchy” or a primitive “constitutional monarchy”, making the central Temple a constitutional court both serving the requirements of the legal code and rewriting it as case-law requires (Levinson, 2001: 532). This notion fits well both with Levinson’s idea of the dependence of the Deuteronomist on the laws of the past, mainly in tone and grammar, while he exercises considerable freedom and creativity in the reapplication of traditional motifs to new circumstances and Leuchter’s theory that the

³ Mosheh Weinfeld uses the ritual of the emancipated slave to illustrate this and posits that it means that the slave is brought to the local sanctuary. This use of the local sanctuary for such rituals is abrogated by the Deuteronomist (Weinfeld, 1972: 233)

⁴ For a discussion on the issues on the text of 2 Chr 17 and 19, see Gary N Knoppers, Jehoshaphat’s judiciary and “The scroll of YHWH’s Torah” (Knoppers, 1994).

reconfiguration of the judiciary not only re-employed the local Levites, but used their expertise in a national judicial system.

This relocation of the judicial function from the traditional Ancient Near Eastern domain of the monarch to the centralized cult, due to its uniqueness, could thus be said to be one of the key elements of the Deuteronomistic programme. The Deuteronomist, then had an agenda and that was to place the judiciary squarely in the domain of the cult.

2.3.3. The Cult

In Deuteronomy 12:1-7, the command is given to break down the local, regional sanctuaries, indiscriminately, and to centralize worship of YHWH at “the place that the Lord your God will choose out of all your tribes to put his name and make his habitation there” (Deut. 12:5 ESV). It is this centralization of the cult which forms the backbone of a programme of centralization in general of the Deuteronomist, according to Bernard Levinson.

The king, in the Ancient Near East, was the patron of the cult (Levinson, 2001: 517), but in the Deuteronomic law code, the king is afforded no such privilege but “his only contact with a religious official is to arrange for a copy of the Deuteronomic Torah to be written for him” (Levinson, 2001: 523). Levinson highlights here the thorough Deuteronomic dissolution of the king’s jurisdiction over cult by contrasting the Josianic reforms and the narrative of the celebration of the first Passover under the command of the king. This anomaly is explained by attribution to a later Deuteronomistic redaction, perhaps at the hand of a later Deuteronomist who wants to introduce a return to an Ancient Near Eastern view of kinship. The difficulty here is that, if the law of the king in Deuteronomy 17 is early, it was promulgated close to, if not in the time of Josiah. If the Deuteronomistic History is attempting to abrogate the Deuteronomic law as Levinson suggests, then the situation is extremely complex. Perhaps, however, the aim of the Deuteronomistic History in recording Josiah’s disobedience of the law of Deuteronomy in this way, though with good intentions, is an attempt to further explain the fall of the monarchy despite the reforms.

Bernard Levinson centers his entire argument for his work *Deuteronomy and the Hermeneutics of Legal Innovation* on the centralization of the cult (Levinson, 1998). Elsewhere he notes that there is a total separation of monarch and cult in Deuteronomy, as distinct from other Ancient Near Eastern contexts (Levinson, 2001: 524). This separation of the monarch from the cult further curtails the king's influence in the life of the nation. Thomas Römer, in quoting Patricia Dutcher-Walls, notes that the restriction of the monarch's powers creates a place where the state might be loyal to Assyria and to YHWH, separating the politics of the vassalty of Assyria from the allegiance of Israel to YHWH (2007: 79).

Whatever the motivation, there appears to be a clear programme in Deuteronomy to centralize all of the life of Israel around the cult in Jerusalem. With the king so-to-speak sidelined, the Deuteronomist is free to arrange the cult and judiciary to benefit the centralized administration.

Bernard Levinson argues for a distinct programme of “cultic centralization and local secularization” which underpins all of the innovations of the Deuteronomist. (1998: 51). He approaches the book of Deuteronomy primarily as legislation, which is used hermeneutically by the Deuteronomist., to reorganize Judean society in the light of new political and social developments. The law of Exodus 20:24, of “an earthen altar” in a local setting is “abrogated” in favour of the centralized sanctuary of Deuteronomy 12:14. The contradictory nature of these laws is reconciled by the authors of Deuteronomy by the use, says Levinson, of carefully constructed legislation using the lemmas of the Covenant Code, but tightening the restrictions to both prohibit local worship and permit local non-cultic slaughter. The legal language, recognizable to the familiar reader, would thus instill with authority the new legislation by seeming to interpret the former and yet contradicting it entirely (Levinson, 1998: 30–32).

Levinson goes on to illustrate, from the construction of the legislation for the Passover and the Feast of the Unleavened Bread that this methodology employed by the Deuteronomist is consistent throughout Deuteronomy where centralization of the cult is proffered. The emphasis on the central sanctuary then secularizes the local setting from which the festivals have been moved. Along with others, Levinson

confirms a definite and deliberate programme of the Deuteronomist, to reconfigure the social and religious life of Israel in terms of the cult.

2.4. The Monarchy and the Book of the Law

The devolution of monarchic power, the centralization of the cult and the secularization of local, previously cultic, activities under the power of the Deuteronomic legislation, together seem to point beyond Levinson's political agenda. Perhaps there is something altogether more altruistic happening here and Duane Christensen quotes S Dean McBride as positing an attempt at an early "Constitutional Theocracy" of which the Deuteronomic legal code is the "polity" (Christensen, 1993: 62–77). As mentioned above, Bernard Levinson defines what is happening here as the formation of a primitive form of constitutional monarchy.

One of the chief problems with this maneuver of centralization around a law by the Deuteronomist, is the fact that the laws which curtail the function of the king, are at odds with what happens in the histories of Judges – 2 Kings. The fact that King David offers sacrifices, keeps many wives and disobeys the decalogue at several points and then is still presented as an archetypal king, appears problematic. Josiah is even more out of line with the laws of Deuteronomy: "With Josiah made the royal enforcer of Torah as the law of the land, the Deuteronomistic Historian, several generations after the setting of Deuteronomy, returns to the monarch the active connection to the cultus and law that had been, so briefly and idealistically, denied him" (Levinson, 2001: 526).

As problematic as this appears, once it is accepted that the Deuteronomistic History is more than a compilation of ancient documents and rather an organic and complex work which is revisited by the scribes over several centuries, it is possible to see that, for a people separated from the land and temple, without a king, the need for a constitution is paramount to their survival. If the Josianic Deuteronomist is concerned with his agenda of military expansion, then the conquest narratives would suit the purposes well establishing both the right of Israel to her land and her right to defend it. If Levinson's proposal that the scribes had a freedom in the way they reinterpreted even legal material of the past, then the inclusion of the law of the king in

Deuteronomy 17 might not be anomalous. Furthermore, it would be reasonable to expect an exilic Deuteronomist to show the kings to be the reason for the exile, hence, as Römer suggests (2007: 43), allowing the law of the king in Deuteronomy to be exactly that standard to which none of the kings, not even Josiah, measured up.

2.5. Conclusion

Thomas Römer, in his *The So-Called Deuteronomistic History* concludes his section on the royal propaganda in the Assyrian period, writing “Thus the whole law code is dominated by the ideology of centralization” (2007: 81). Bernard Levinson, in agreement, calls the central programme of the legal code of Deuteronomy one of “cultic centralization and local secularization” (1998: 51). Since the process of authoring the Deuteronomistic History is one of several centuries, and the text was adapted and reinterpreted to fit the times and circumstances, it would be impossible to find one or more monolithic agendas in the Deuteronomistic History, but it is surely possible to identify broad intentions within the corpus.

Firstly, the Law of the king in Deuteronomy 17 divests the king of jurisdiction over the judiciary, the cult and the military. While the histories appear to reinstate this authority, it may be argued that it was only with a view to showing the reason for the exile as the failure of the monarchy to follow the requirements of the constitution. Accepting that the Deuteronomistic scribes were of the royal court and, as per Römer (2007: 46), held influence over the king by virtue of sophisticated literacy, it may be concluded that their agenda was to decentralize power by divesting the monarchy of key realms of power. This agenda is effectively sidelining the king.

Secondly, the judiciary in Israel, and the Ancient Near East, had been in the hands of the community leaders or elders who sat in the gates and heard cases according to delegated judicial authority under the king. The Deuteronomist, having deconstructed local religious sites, sets about re-employing the religious staff in the office of local judge. This move makes the Temple the supreme court of appeal, and brings the judiciary firmly into the arena of the cult. This is a deliberate agenda of the reorganization of the judiciary.

Thirdly, the programme of reorganization of the cult seems to be the appropriate way to deal with the sidelining of the king. Without local sanctuaries, certain functions had to be reconfigured so that life could go on. The secular slaughter of animals is the most obvious, while the sacral slaughter is transferred to the feasts, which are moved to the central sanctuary. It would be impossible to deny the agenda of “cultic centralization and local secularization” identified by Bernard Levinson. Along with this agenda is the fierce monotheistic emphasis of the Deuteronomist.

Clearly, then, the Deuteronomist aims to separate from the Monarchy the functions of judge president and that of patron of the cult. The judicial function is assigned to the cultic center and locally the judiciary is represented through the appointment of the Levites, who no longer have local shrines at which to serve, as judges. It is possible that this is an early expression of an independent judiciary, one divorced from the monarchy in order to remove the possibility of undue influence by a partial monarch or even graft, bribery or corruption. This is what might appear at first, but as one considers the restriction of the monarch’s influence, a common denominator emerges which exposes a somewhat less altruistic motive.

The scribal elite which Thomas Römer identifies as the Deuteronomistic school are themselves representatives of the cult, or at least closely associated with the same. If it is their agenda to booth strip the monarch of power and make the cult the locus of the judiciary, then it is fair to assume that this school is aiming at an ideological coup. While the question remains as to whether any of this was written into the Deuteronomistic corpus during the reign of the kings, it certainly writes them out of the governance of Israel.

A people in exile, stripped of temple, king and their own judiciary would need to have another focus and that is where Bernard Levinson’s theory of a “constitutional monarchy” finds its substance. Once the monarchy is entirely removed, there remains a constitution, so that the organizing institution of the dispersed people is the constitution. So from the time of Josiah, where the scribes might well have written to create a utopian view of society, to the final form of the Deuteronomistic History, there appears to be a development from a nation led by a charismatic, God appointed leader, to one led by a divinely dispensed constitution, in the Torah.

Bernard Levinson puts forward an agenda of cultic centralization and local secularization. This programme is clear and, were the people of Israel still *in* Israel, this programme would make perfect sense. It is possible however that the programme which strips the monarch of his jurisdiction, centralizing power at the cultic center, is at its core a programme aimed at giving the real power in Israel to the literate, the elite, and the book. This means that the creation of what Levinson calls a constitutional monarchy is much more than that. It is a functional oligarchy led by the scribal elite under the guise of cultic centralization. The Deuteronomistic School which finally penned the “constitution”, did so at a time when neither monarchy nor cult any longer existed, in the Babylonian era. But they used them to construct an elaborate structure of scribal leadership centered on a document which alone was authoritative and which they alone could reliably interpret.

For the purposes of this study however, the above extrapolation will remain a suggestion of further work to be done.

The three principal agendas of the Deuteronomist will be taken as the divestment of monarchic power; the relocation of the judiciary to the cultic center with local, Levitical representation; and the centralization of the cult with local secularization and removal of royal patronage. The implicit agenda of the relocation of military leadership and conscription to the cult is worth noting, but has no bearing on the present study.

Having identified three principle agendas of the Deuteronomist in the legal material of the book of Deuteronomy, we now proceed to an in depth exegesis of Deuteronomy 21:1-9 with a view to identifying both how and where the above agendas are either supported or contradicted in the final form and how and where those might have come into being in the editorial process. We focus particularly on the work of Ziony Zevit, who provides an excellent framework for study in his article “The ‘eglā ritual of Deuteronomy 21:1-9” (Zevit, 1976).

Chapter 3

Exegesis of Deuteronomy 21:1-9

3.1. The literary position of Deuteronomy 21:1-9

Duane L Christensen places this pericope at the end of the section Deuteronomy 19:1-21:9 and his first volume on Deuteronomy ends with a discussion of this law (Christensen, 2001: 453). The section begins with the provision of cities of refuge to deal with manslaughter and ends with the expiation ritual for the unsolved murder. He identifies this as “the last of the laws dealing with public officials” and part of the collection of such laws beginning with 16:18 (Christensen, 2001: 453)(ibid Christensen, 2001). Walter Brueggemann concurs citing Deuteronomy 21:1-9 as “more or less a continuation of the concern of 19:1-13” the latter being “simpler” because the perpetrator was known (Brueggemann, 2001: 215).

Callum M Carmichael calls this a “made up law” (1974: 135) and, in his article *A common element in five supposedly disparate laws*, links Deuteronomy 21:1-9 to the four following laws in a study of commonality around the theme of life and death, with each of the five laws in Deut 21 presenting the problem of “death in the midst of life”, the resolution for which is provided in each case to separate the two (Carmichael, 1979: 142). Bernard Levinson rejects Carmichael’s approach as employing “single words or phrases, either putatively otiose, uncommon, or otherwise anomalous to establish analogies based on linguistic similarities”, dismissing the observations as unlikely (Levinson, 1990: 239). Perhaps Benjamin Sommer’s conclusion to his article in the Jewish Study Bible would be a kinder and more inclusive approach to Carmichael:

“By reading and revising, explaining and debating, the authors of the Bible as well as those who follow them demonstrate that many different texts, biblical and otherwise, contain the living words of God.” (Somer B. D., in Berlin, Brettler & Fishbane, 2004: 1835)

What appears to have consensus opinion among scholars is what Gerhard von Rad remarked in his 1966 commentary, that the law “bears the marks of great antiquity”

(von Rad, 1966: 15; cf. Zevit, 1976: 377). This raises the question of the history of development of the pericope and how it arrived at its final form. Gerhard von Rad notes that the priests appear, in verse 5, as an addition, and “not a particularly skillful addition” and he goes on to note that the prayer is a further addition, reinterpreting an Ancient Near Eastern practice YHWHistically” (1966: 135).

This process is dealt with in some detail by Zvi Zevit who, after J. L’Hour, posits an early collection of “bi’artā” laws which are based on the formula “you will remove the evil/<guilt for> innocent blood from your midst/from Israel” (Zevit, 1976: 379). Zevit then proposes a three-stage process through which the law developed. The Ancient Near Eastern practice identified by von Rad, finds its roots in fertility sacrifices which aim to placate the gods of the netherworld in order to guarantee future fecundity, according to Zevit (1976: 389). So the original, magical rite, was transformed, says Zevit, into a pre-Deuteronomistic list of rules of riddance which are aimed at “removing guilt from the land”. The final form of the law, which we find in Deuteronomy 21, having been included, has, presumably, been subject to the re-working of the Deuteronomist. This re-working has removed any ancient magical element and rendered a law to fit the Deuteronomistic corpus (Zevit, 1976: 390).

It would be very useful at this point if it were possible to identify the purely Deuteronomistic additions and deal with them separately, for this would give us a short-cut into the mind of the Deuteronomist and make the core issues of emphasis and agenda, applied in this section, obvious. Zvi Zevit does make an attempt to distill the original law from the work of the Deuteronomist and this is worth mentioning. What follows is a broad-strokes explanation of the process according to Zevit.

Zvi Zevit, with von Rad, identifies the addition of the Priests to the ritual, especially after the killing of the animal, as non-original (Zevit, 1976: 381). Zevit asserts that the ritual originates in antiquity, with various layers of re-working on its way to the final form, and then appears in Deuteronomy as an integrated law. He notes that the appearance of the Priests is peculiarly Deuteronomistic especially since they appear only after the ritual slaughter, rendering the practice non-cultic. He posits a Deuteronomistic addition of the priests to the bi’artā collection. Furthermore, Zevit posits a Deuteronomistic origin of the inclusion of the judges as an administrative

compromise between Levitical legal administration and the desire of the king to retain autonomy in this regard (Zevit, 1976: 382). This “compromise” posited by Zevit is called into question when considering the wholesale limitation of the king’s power in Deuteronomy 17:14ff and 16:18-20. A further question is raised regarding the “judges” which are mentioned in the same sentence as the “elders” and would, in antiquity, have been those administering justice at a local level, but now, practically, the oath and ritual are performed in front of the “Priests, the sons of Levi”. Mark Leuchter, in his thought-provoking article, *The Levites in your gates*, makes a convincing case for the “gates” as being the judicial locus and the Levites as replacing any prior judicial body in the process. All of this argues for two things if this is a Deuteronomistic addition: Firstly, the judges are possibly a late addition, but the purpose is not to afford the royal administration jurisdiction, but the very opposite and; secondly, the local Levites are at this point appointed the local court with access to the cultic center as the supreme or even appeal court (Deut 17:8-9).

Two further phrases are identified as Deuteronomistic by Zevit, and these are the opening phrase, *בְּאֶדְמָה אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לָךְ לְרִשְׁתָּהּ*, which forms part of the framework which puts Deuteronomy in the mouth of Moses as a pre-conquest speech, and *כִּי־תַעֲשֶׂה הַיִּשָּׁר בְּעֵינֵי יְהוָה*, which, according to Zevit is characteristically Deuteronomistic.

This reconstruction of the work of the Deuteronomistic school in editing the law for use in the body of Deuteronomy will be picked up as we consider the pericope verse by verse. What follows is a translation and exegesis of Deuteronomy 21:1-9, verse by verse.

3.2. Translation and Exegesis.

3.2.1. Verse 1:

כִּי־מָצָא חָלָל בְּאֶדְמָה אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לְךָ לְרִשְׁתָּהּ נָפֵל בְּשׂדֶּה לֹא נֹדֵעַ מִי הִכָּהוּ :

Translation: *If a body is found slain in the land which the lord your God is giving you to possess, having fallen in the open country, and it is not known by whom they were struck.*

3.2.1.1. Discussion of grammatical aspects

מָצָא: This means “to find”, the sense of which is to find something after a search.

That might plausibly be intended here because the victim could have been missing for a while and the next of kin might have been searching for some time, but it is equally likely that the sense is “to happen upon” purely by chance (Harris, Archer & Waltke, 1999: 1231).

חָלָל: The root חָלָל implies that it is obvious that there would be foul-play suspected (Pierced) (Brown, 2000 חָלָל)

אֱלֹהֶיךָ: The singular of the second person prepositional suffix is worth noting here, since the “number” of the voice in Deuteronomy has given rise to much debate. Duane Christensen, for instance, explains the *Numeruswechsel* phenomenon in terms of “structural markers” in the musical liturgical score of Deuteronomy, giving a brief overview of views in his commentary, his appearing to be somewhat of a minority view, despite its being compelling (cf. Christensen, 1993: 394–402, 2001: ci).

לְרִשְׁתָּהּ: Walter Brueggemann asserts the contingent nature of Israel’s relationship to the land. “These two histories set the parameters of land theology in the Bible: presuming upon the land and being *expelled* from it; trusting toward a land not yet possessed, but empowered by *anticipation* of it. Our lives are set between expulsion

and *anticipation*, of losing and expecting, of being uprooted and rerooted, of being dislocated because of impertinence and being relocated in trust” (Brueggemann, 2003: 15). This will be discussed when we consider the nature of the sacrifice and its setting.

נָפַל: This Qal infinitive absolute is used in a perfect sense and can mean to fall “by accident” but is more likely to mean falling in violent death. This is confirmed by the use of the verb הִכָּהוּ, meaning “smite”, clarifying the nature of the death.

בַּשָּׂדֶה: Here the word for a field is used, but Brown et. al. remark on the nature of the field. It is suggested that the field would see few passers-by and thus be “exposed to violence” (Brown, 2000 שָׂדֶה).

לֹא נֹדָע: The negative “it is not known” does not exclude the possibility of an investigation, but the absence of a suspect to stand trial is what gives occasion to the ritual.

3.2.1.2. The corpse in the field

In keeping with the motif of the sermon of Moses at the eve of the conquest of Canaan, this pericope begins with the subject, qualified with the phrase בְּאֶדְמָה אֲשֶׁר יְהוָה אֱלֹהֶיךָ נֹתֵן לְךָ לְרִשְׁתָּהּ which places the eventuality in mind, somewhere in the future. The “land which YHWH your God is giving you to possess” is the setting of the crime perpetrated. The use of the כִּי could plausibly be to emphasize the inevitability of the cold-case in question.

Bernard Levinson notes that the typical marker of the main clause of a Law in Deuteronomy is the general, כִּי, but here the translation should be the conditional, “if”, since the law is casuistic, although it has none of the sub-markers of sub-clauses (Levinson, Bernard M., 2013: 26).

One who is “slain” (חָלַל), means that this is not a natural death, but one brought about at the hand of an assailant. In legal terms the death might not have been

premeditated and hence not murder per se. The term murderer however draws attention to the horror of the innocent death and the fact that it was unnatural.

3.2.1.3. The unknown murderer

Deuteronomy 19:13, spells out the contingent nature of peace and prosperity in the new land. The unknown murderer gives rise to a predicament because the shedding of blood puts the welfare of the nation in jeopardy as explained in Deuteronomy 19:13; לֹא־תַחֲחֹס עֵינֶיךָ עָלָיו וּבְעֶרְתָּ דַם־הַנֶּקִי מִשְׂרָאֵל וְטוֹב לָךְ; (*The Hebrew Bible: Andersen-Forbes Analyzed Text*, 2008, Deut 19:13). The mechanism of this threat is not spelled out in Deuteronomy 19, and could be the practical result of lawlessness, but in Numbers 35:33-34, the consequences are that the land is polluted by bloodshed. The known murderer is to be killed in order to avoid disaster, but the unknown murderer cannot be executed, a predicament which gives rise to the need for the ritual.

It is on this issue that Calum M Carmichael pleads the case of the problem of the juxtaposition of life, in the life-giving land, and death, in the body of the victim, as the reason for the inclusion of the ritual in Deuteronomy (Carmichael, 1979).

Carmichael's theory is that life and death should never be brought together as they are in the case of this law and the four which follow. The means of separation and return to proper order is the 'eglā ritual, which brings resolution by removing the death from the midst of life. The statement that there is no atonement for the land on which blood is shed could be what is addressed by the 'eglā ritual. Ziony Zevit identifies a stratum going back to a magical rite which placates the netherworld deities behind this law, but divests the extant law of such superstitions (Zevit, 1976).

D P Wright, in his article on Deuteronomy 21:1-9 as a "rite of elimination", links the spilling of innocent blood to the withholding of life by the land (Wright, 1987b). The predicament, for Wright, gives rise to the inclusion of the ritual in the corpus of Deuteronomy, which requires an elimination ceremony, and a re-enactment of the murder, but this will be discussed later (Wright, 1987b: 403). Duane Christensen links Deuteronomy 21:1-9 to Deuteronomy 19:1ff as arising out of the Deuteronomic aversion to the spilling of innocent blood (Christensen, 2001: 453).

Whatever the nature of the rite, the consensus appears to be that the reason for the insertion of the ritual amounts to the problem of innocent blood spilt and no other way of ridding the land of the ill-fortune occasioned by the spilling of the blood, due to the lack of a known perpetrator who would be executed thus removing the threat to life and fecundity. Since this need not be a murder, but could have been an accidental killing, the rite implicitly allows for the possibility that the perpetrator had recourse to the “Cities of refuge” in Deut 19, and that the local elders have not yet become aware of the incident or the perpetrator’s asylum in one of the cities. Another possibility is that the victim’s family has found out the location of the murder and seeks blood revenge, thus putting the nearby towns at risk. Initial inquiry reveals that the rite could be legal addition to the laws of both the cities of refuge in Deuteronomy 19 and the stipulation of Numbers 35, covering the possibility of national culpability or local reprisal, since the identity of the killer is not known.

3.2.2. Verse 2

וַיֵּצְאוּ זִקְנֵיךָ וְשֹׁפְטֶיךָ וּמָדְדוּ אֶל־הָעָרִים אֲשֶׁר סְבִיבַת הַחָלָל:

Translation: *Then your elders and your judges will go out and measure the distance to the cities round about the slain.*

3.2.2.1. Discussion of grammatical aspects

וַיֵּצְאוּ: The fact that the elders and judges are instructed to “go out” serves to reiterate that the body is found outside the city precinct.

זִקְנֵיךָ וְשֹׁפְטֶיךָ: The juxtaposition of these two offices may appear to be a tautology in the light of the fact that in early clan structures the clan leaders, or elders, would have served as the judges. The addition of the judges could be a Deuteronomistic insertion to account for the centralization of the judiciary with the cultic center and hence the separation of the office of local elder from that of judge which represents the central sanctuary. Erhard S. Gerstenberger, in his work *Theologies in the Old Testament*, argues that the development from the “circle of family and clan” to the

“village (small town) community saw the emergence of village elders who would serve as judges in the community of families represented in the small town of pre-monarchic times” (Gerstenberger, 2002: 106–108). This is discussed further below.

וּמִדָּה: The word “measure” is meant literally as a forensic process, although the method is not described. The word used elsewhere is associated with length or volume (Ezek 42:15; Is 65:7; Ezek 43:10; Nu 35:5; Ru 3:15) (Brown, 2000, מִדָּה).

סְבִיבָה: The feminine form relates to the noun הָעָרִים and translates as “around about” with the sense of a “circuit”. No reason is given as to why the nearest city has to be found but it could possibly be to respect fairness in assigning responsibility in the execution of the ritual, since there would be an associated cost, although the problem of the unrequited murder affects all in the land.

3.2.2.2. The identity of the elders and judges

The וְ-sequential follows in the line of argument of the conditional כִּי so that the discovery kicks off a series of events necessitated by the horror. The following two words, זִקְנִיד וְשֹׁפֵטִיד, are worthy of investigation because there has been some debate as to what is meant by juxtaposing the two words which appear to represent two offices, that of Elder and Judge. The term judge refers directly to the office created in Deuteronomy 16:18 and, according to Alexander Rofé, establishes an office which supersedes the older tribal practices:

“It seems likely that before this law was enacted, judgment was entrusted to individuals whose authority arose from their spontaneous recognition by the people. These were the heads of the important families, tribal and municipal notables – in other words, the remnants of the pre-monarchical tribal and patriarchal organization” (Rofé, 2002: 105).

Referring again to the discussion of Mark Leuchter (2007), the very judges referred to could be synonymous with the הַכֹּהֲנִים בְּנֵי לֵוִי (vs 5) especially since the function assigned to them is כִּי בָם בָּחַר יְהוָה אֱלֹהֶיךָ לְשָׂרְתּוֹ וּלְבָרָךְ בְּשֵׁם יְהוָה וְעַל־פִּיהֶם יִהְיֶה כָּל־רִיב וְכָל־ נִגְעַ: , effectively making them both custodians of divine blessing and judges and

arbiters of disputes and cases of assault. Against what Ziony Zevit posits about the “Levites within your gates” (cf Deut 12:12) not being the ones who are involved here, stating that they are priests from the central sanctuary who are present (1976: 382), Leuchter writes that the priests who are present and represent the national judiciary would be local priests so authorized. Moshe Weinfeld identifies the judges as “representatives of the state central authorities” who are required with the local elders, who represent the family of the deceased, to avert any untoward resolution of the unhappy situation and to ensure the proper allotment of responsibility for the rite (Weinfeld, 1972: 234). Alexander Rofé posits that the local judiciary is the appointment of the royal center but, it seems more likely, in the light of the Deuteronomic divesting of royal authority, that “‘the judge’ who sits ‘in the place that YHWH will choose’” (Rofé, 2002: 106), is a cultic and not a royal function (cf. Levinson, 2001: 522). The unhappy situation possibly incurs the threat of reprisal from the family of the victim and the presence of the judges may serve to apportion appropriate guilt for the action and then deal with it with the correct jurisprudence.

The problem of the elders (previously judges) who are involved in the ritual, while the judges are not mentioned again, could be solved by recognizing the above. In this case, then, the elders represent the families dwelling in the city, while the judges, who are local Levites, represent the centralized cultic judiciary, described by Levinson (2001: 520). Thus inclusion of judges with elders could be a soft inclusion of the local priests who represent the central cultic judiciary who then appear alongside the traditional clan leaders, or elders, so that the interests of both justice and fair representation are protected.

So the instruction that “your elders and your judges” are to measure, is one in which two parties with different interests in the activity are assigned to carry out a forensic task to ensure, firstly a local interest in the task and secondly, a national judicial regulation of the same.

The appearance of the judges who represent the national judiciary, then, while definitely not be a part of the original ancient and pre-“bi‘artā collection”, since it would be anachronistic in the light of the development from clan structures to a centralized administration and judiciary, it appears integral with the law in Deuteronomy.

3.2.2.3. The Measurement

This forensic act appears to have no bearing on the actual guilt of the towns nearby. The elders and judges are commissioned to find out which town is nearest and the responsibility for the rite including the provision of the animal, falls to that town. No method of measurement is given, but it would be fair to assume that it would be paced out if there were doubt as to the nearest city. As above, this responsibility given to the two groups would ensure that the process was fair and proper since the elders represent the cities and the judges, the central judiciary. One question raised by the process is whether there is any real guilt to be atoned for on the part of the cities or their elders. The process seems to apportion some responsibility to the surrounding cities, purely by virtue of the required rite and confession. Ziony Zevit refers to Jeremiah's defending his life, in Jeremiah 26:15, by stating that the inhabitants of a city are held guilty of innocent blood along with the perpetrators. He goes on to argue that "All Israel was considered accountable for innocent blood, but practically speaking, the community in which or near which the crime occurred was considered responsible." He further states that Deuteronomy 21:8a "makes it clear that liability was accounted to the elders of the city closest to the site of the corpse: and they (the elders) will be absolved of bloodguilt" (Zevit, 1976: 381). Commenting on this pericope, Jeffrey M Cohen, in his article on corporate responsibility, *Is It A Mitzvah to Do Security Duty?* quotes from Leviticus 19:16, "Do not stand idly by the blood of thy neighbor", arguing that every Jew has a responsibility in "averting such potential disasters" and that the corporate responsibility is expressed in the prayer, is effectively saying, "he did not come under our jurisdiction and leave without our providing him with food for the journey; neither did we let him go [into dangerous countryside] without an escort" (Cohen, 1988: 54). This issue of corporate responsibility could be a key to understanding this strange law and its inclusion in the legal corpus of Deuteronomy. We shall return to this matter in the conclusion.

3.2.3. Verse 3

וְהָיָה הָעִיר הַקְּרִבָּה אֶל־הַחָלָל וְלָקְחוּ זָקְנֵי הָעִיר הַהִוא עֹגְלַת בָּקָר אֲשֶׁר לֹא־עָבַד בָּהּ אֲשֶׁר לֹא־מְשָׁכָה בָּעֵל:

Translation: *Then the elders of the city nearest to the slain body will take a heifer, which has been neither worked nor yoked.*

3.2.3.1. Discussion of grammatical aspects

וְהָיָה הָעִיר הַקְּרִבָּה אֶל־הַחָלָל : This phrase is unclear, since it appears to say, *the city was closest to the body* or *and it came to pass, the city closest to the body*. If there were a participle of relation, אֲשֶׁר it would denote the specific city which was found to be the nearest to the body. Perhaps the Qal imperfect of הָיָה would have made more sense, beginning the instruction as to what should be done by the city. In any case, the sense of the phrase is that such a nearest city was found, adjudicated by the officials in verse 2 and that city should execute the ritual.

עֹגְלַת בָּקָר : The plain meaning of this is a *Heifer, calf of a cow*. Gesenius is less specific about gender although none of the examples given require a masculine reading (Gesenius, 2003: 605). There is no reason to question that a female animal is intended. (cf., Brown, 2000, עֹגְלָה)

אֲשֶׁר לֹא־עָבַד בָּהּ אֲשֶׁר לֹא־מְשָׁכָה בָּעֵל : Referring to the heifer, that she had not been put to work. This qualification could be necessary since Brown Driver and Briggs suggest that a heifer could be a working animal. Although Hosea 10:11 qualifies the noun עֹגְלָה מְלֻמָּדָה, the setting could imply that a heifer wouldn't ordinarily be trained to work. The qualification here ensures the unblemished quality of the animal with a non-working life having minimized the risk of injury. See below for further discussion.

3.2.3.2. The unworked heifer

The nature of the animal has raised some debate. The obvious meaning is that this is a young cow which has neither calved nor worked. The term עֹגְלָה has become synonymous with the law in question, but the term itself raises some issues

regarding its pre-Deuteronomic form. There is no doubt that the animal intended is female because, in this case there is a preposition, הָ and the suffix, הָ of gender. Ziony Zevit however, points out a problem with this if this rite constitutes a sacrifice and especially a community purification sacrifice. In terms of Leviticus 4:13-15, the community sacrifice, in P, can only be offered by means of a male animal. Zevit argues for a transition in cultic practice in Israel, the details of which he states as unclear, which leads to the acceptability of a female animal for a community expiatory sacrifice (Zevit, 1976: 385). Ziony Zevit posits this transition based on 1 Samuel 3:14, which states that the זֶבֶח is an expiatory sacrifice and, according to Leviticus 3:1, the female of the species is acceptable. This *allows* for the female to be used and not the male, which, according to Zevit, “came to be preferred for sacrifices on this particular occasion” (Zevit, 1976: 386). This transition not only allows for the use of a female animal, but proffers it, but does not mean that the ritual had always called for a female animal since the early, Priestly form of community sacrifice calls for a male animal (Lev 4:13-15).

Referring to the nature of the ritual, Keil and Delitzsch note that “in order to take the guilt upon itself and bear it, the animal was to be in the full and undiminished possession of its vital powers” (Keil & Delitzsch, 1951: 404). This raises the question of whether the animal takes any real guilt upon itself at all. The theory of David Wright, that this is a rite of elimination (Wright, 1987b), explores the nature of the ritual as one in which the guilt of the elders is symbolically passed from them to the heifer. He fails in this article to mention the significance of the unworked heifer, only the nature of the place. His argument however, assumes the suitability of the animal to act as the remover of the guilt of the community to a remote place through the washing of the hands over the carcass of the dead heifer. His parallel to the scapegoat of Leviticus 16 makes this a community purification sacrifice, where the guilt is transferred through the hand-washing water onto the heifer and the water of the river, which will carry the guilt away, transferring the pollution onto the land which is remote and will remain uncultivated (Wright, 1987b: 399).

On this issue, it is fair to conclude that the animal in question is a young cow which has not been worked and which is, as such “unblemished”. The reason for its being

unblemished seems unclear since there is no actual guilt on the part of the community which could be passed to the animal. David Wright's theory of "disposal" requires the passing of real guilt and, since the murderer is unknown, guilty and, as yet, unpunished, the *real* guilt will remain without being disposed of. The youth and purity of the animal, if not for cultic reasons alone, does heighten the drama of the rite echoing the horror in its death of the death of the victim whose body lies in the open field.

3.2.4. Verse 4

וְהוֹרִדוּ זִקְנֵי הָעִיר הַהוּא אֶת־הָעֶגְלָה אֶל־נַחַל אִיתָן אֲשֶׁר לֹא־יִעֲבֹד בּוֹ וְלֹא יִזְרַע וְעָרְפוּ־שָׁם אֶת־הָעֶגְלָה בְּנַחַל:

Verse 4: *And the elders of that city shall bring the heifer down to a wadi with a perennial stream, which will neither been tilled nor sown and they shall break the neck of the heifer, there in that valley.*

3.2.4.1. Discussion of grammatical aspects

נַחַל אִיתָן: The qualification of the noun for stream by the adjective meaning permanence translates as a *perennially flowing river/wadi*.

לֹא־יִעֲבֹד בּוֹ וְלֹא יִזְרַע: The imperfect form of the verbs used here prohibits the future cultivation of the land where the ritual is carried out. The argument of Ziony Zevit, discussed below, is that this prohibition is in the light of the localized pollution of the land through the ritual (1976: 388). For David Wright, the elimination rite relocates the pollution to the remote place to remove the threat to productivity (1987b: 395). In either case, the remoteness of the location would prevent the pollution affecting the nearby land since it is banished to a place which will see no traffic in the future.

וְעָרְפוּ: *Break the neck*. This is one of the key late amendments to the early form of the ritual according to Ziony Zevit. The original probably required a blood sacrifice

which would not have been allowed in the Deuteronomistic programme of cultic centralization (Zevit, 1976: 384).

3.2.4.2. The perennial, un-ploughed un-planted wadi

The next duty of the elders of the city is to bring the unblemished heifer down to an unspecified valley with a stream and break its neck. The stream in question is qualified with the adjective אֵיתָן, which, according to Brown, Driver and Biggs, makes reference to its enduring nature (Brown, 2000, אֵיתָן). The root appears in conjunction with rivers only in Amos 5:24, Deuteronomy 21:4, Psalm 74:15, Exodus 14:27 and 1 Kings 8:2, the latter having the meaning of the “month of *steady flowings*” or the 7th month which, being the rainy season, is when rivers flow strongly (Brown, 2000, אֵיתָן).

Keil and Delitzsch suggest that the river would “suck in the blood and clean it away” preventing its reappearance through “ploughing and working the soil” (Keil & Delitzsch, 1951: 405). This is based on the notion that the ritual is a symbolic enactment of the punishment of the murderer, but the view seems to confuse the water which symbolically washes the hands with the symbolic murderer’s blood since, in the ritual, no blood is spilt, which is acknowledged in the assertion by Keil and Delitzsch, that this is *not* an expiatory sacrifice (Keil & Delitzsch, 1951: 404). Furthermore, if the future ploughing and sowing of the field is prohibited, as it appears to be in the niph‘al imperfect of the two verbs יִעֲבֹד and יִזְרַע, then there is no need for the “blood” to be carried away, since it will never come to light.

David P. Wright cites two biblical examples where innocent blood affects the productivity of the land (Gen 4:1-10 and 2 Sam 21:1-14). He then argues that the ritual “is performed in an uncultivated place in order to relocate the pollution there”, by way of ritually re-enacting the murder (Wright, 1987b: 395). This action then averts the negative result of either famine or diminished productivity in the cultivated land. This “symbolic” re-enactment circumvents the obvious incongruity of a local cultic rite, but there is a possibility which allows for both a real sacrifice and a local setting within the Deuteronomistic agendas. I will return to this in the analysis in chapter 4.

3.2.4.3. The breaking of the neck

The key issues here are, firstly that the neck is broken in what appears to be a cultic ritual; and, secondly, the remoteness of the rite from the central sanctuary.

Deuteronomy already allows for non-cultic slaughter of animals in the local setting thus, according to Bernard Levinson, “secularizing” the local act (Levinson, 1998: 49–52). The problem with the rite here legislated, is that there is a slaughter of what appears to be an, at least partly, cultic nature in the local context. If Levinson’s theory of cultic centralization is universally to be applied to the Deuteronomistic work, then the rite appears to go against the agendas of the Deuteronomist. The appearance of the priests comes after the animal’s neck has been broken, so even if this is an exceptional circumstance of cultic slaughter, along the lines of what Zevit calls a “quasi” sacrifice, it cannot be argued that the priests oversee the sacrifice because they are not required to be in attendance until after the death of the victim (Zevit, 1976: 385). If the neck is to be broken, then there shouldn’t be any deliberate blood-letting, which might mitigate against a cultic setting away from the central shrine, but even the presence of blood seems to be in question.

The fact that the animal is to be “*neither worked nor yoked*” is, according to Ziony Zevit, simply another way of saying “unblemished” (Zevit, 1976: 384–5). His footnote makes the interesting remark that “even in its deuteronomic recension, the ritual was quasi-sacrificial”, a point that will be examined further when we consider the breaking of the neck (Zevit, 1976: 385). If this is indeed some sort of sacrifice, then all biblical laws would require an unblemished animal. Gerhard von Rad calls this ritual an offering and a sacrifice, which at first appears anomalous since, in all cases apart from the redemption of a firstborn donkey, in Exodus 13:13 and 34:20, the spilling of blood is part of the sacrifice (von Rad, 1966: 136–7).

Both Keil and Delitzsch and David Wright mention the “blood” of the ritual. The former give as the reason for the stream, the removal of the water of hand-washing, and the latter posits a symbolic relocation of the blood to a remote and inarable place so as to avert the negative consequences of the spilling of innocent blood (Keil & Delitzsch, 1951: 405); (Wright, 1987b: 403) . Both of these theories fail to recognize that blood is not actually spilt, which omission would rob the rite of its full

impact, at least visually if blood is either symbolically to be carried away or relocated in the rite.

Ziony Zevit recognizes the parallel with the redemption rite of the ritually unclean “ass” of Exodus 13:13 and 34:20. His argument is that early Israelite practice saw the ass as an acceptable sacrificial animal and that the breaking of its neck away from the central altar was considered a cultic action. He bases this compelling argument on a Mari text from approximately five hundred years before the period of the Judges and the formulation of the Covenant Code, which calls for the cultic sacrifice of an ass, “the son of a jenny” (Zevit, 1976: 383). He then notes that the Priestly regulation in Leviticus 1:15 and 5:8 are allowing for the neck-breaking of clean animals away from the cultic center, and see this neck-breaking as a “sacral act” (Zevit, 1976: 384). The Deuteronomist however, argues Zevit, had no such sensibility and simply saw the local neck-breaking as non-sacral and the Deuteronomist thus replace what, prior to the Deuteronomistic edition of the ritual, had been a regular cultic slaughter or זָבַח with the עָרַף of breaking the neck. Prior to the Deuteronomistic form of the ritual there was no need to limit the nature of the killing, since local sacrificial slaughter was allowed. If this is the case, then the situation is easily explained as to why the rite is allowed to occur in a local context and why the priests are not present for the neck-breaking. The question of the nature of the ritual, cultic or not, and the presence of the priests raise questions about the efficacy of the rite. How does it achieve its purpose if the slaughter is neither cultic, nor overseen by priests, a situation which is unprecedented in any biblical legal corpus.

The role of the priests in this rite may shed further light on the nature of the ritual and its development into the ritual as it appears in the book of Deuteronomy.

3.2.5. Verse 5:

וַיָּגֶשׁוּ הַכֹּהֲנִים בְּנֵי לֵוִי כִּי בָם בָּחַר יְהוָה אֱלֹהֶיךָ לְשָׁרְתוֹ וּלְבָרְכְךָ בְּשֵׁם יְהוָה וְעַל־פִּיהֶם יִהְיֶה כָל־דִּבְרֵי וְכָל־נִגְעֵ:

Translation: *Then the priests, the sons of Levi, shall come forward, whom YHWH your God has chosen to serve him and bless, in the name of YHWH, for they shall pronounce judgment in all matters of dispute and assault.*

3.2.5.1. Discussion of grammatical aspects

וַיָּגֶשׁוּ הַכֹּהֲנִים בְּנֵי לֵוִי: This phrase, along with the variant, הַכֹּהֲנִים הַלֵּוִיִּם, is peculiar to Deuteronomy. The former appears in 21:5 and 31:9, while the latter appears in 17:9, 17:18 and 24:8.

וְעַל־פִּיהֶם: Literally meaning *upon their mouths* this is idiomatic for the verdict of the Levitical Priests, placing the judicial function within their jurisdiction.

3.2.5.2. The role of the Priests.

The recognition of the oddness of the priests' presence in the rite leads to the question of exactly what function they perform. The matter of the entry of the priests onto the stage of this ritual is one which seems strange if this is not a sacral event. There are a number of possibilities for their inclusion. Firstly, their role could be simple oversight, ensuring that the ritual is carried out in the proper manner, as posited by Keil and Delitzsch and S. R. Driver (Keil & Delitzsch, 1951: 405). This theory is simple and obvious. The presence of Levites in the town, who represent the central cult, means that the practice of a rite such as this could be overseen without the need for it to be performed centrally.

Secondly, their presence could be to preside over a rite which retains some level of cultic content. The suggestion of Ziony Zevit that the rite is "quasi" sacral allows for the possibility but, in the light of Bernard Levinson's work on the secularization of local slaughter, it seems unlikely that the Deuteronomist would retain a vestige of the cult in a rite to be performed in a local setting.

Thirdly, it could be that the priests do not perform a cultic function at all, but preside as judges over the testimony of the elders, representing the central judiciary, to give weight to the confession and, on the weight of its authenticity, to grant absolution to the towns based on the testimony of their representative. This goes along with Mark Leuchter's study on the *Levite within your gates* (2007), where he posits an administrative and human resources strategy in the redeployment of priests, who no longer served at the local shrine, in a judicial role:

A study of the Josianic redaction of the Deuteronomistic material demonstrates strong sympathies with non-Jerusalemite Levitical heritage and tradition, pointing to the author's great interest in the welfare of these Levites. It is therefore neither likely that the authors sought to cripple or marginalize the countryside Levites throughout Josiah's realm, nor would it have been politically expedient to do so. Deuteronomy deliberately adopts familiar lexemes and literary topoi from older law codes and traditions in order to facilitate a sense of continuity between the religion of Josiah's realm and that which preceded it (even if such continuity was a literary veneer); it would work against this literary logic to cripple politically the hitherto recognized Levitical bearers of those older traditions. The rhetoric of Deuteronomy evidences a desire to appeal to public memory, and part of that appeal would have necessitated some continued role for the local Levites still among the public, though it is clear that this role could in no way be cultic in nature." (Leuchter, 2007: 418–9)

Such priests who resided in the towns concerned, would then be the priests who took up this judicial function in the 'eglā ritual. This seems to be the most plausible reason for the presence of the priests in the light of the deuteronomic programme of centralization.

A fourth possibility, still in the domain of the judiciary, is that the presence of the priests is a vestige of an earlier time where an oath would have formed part of the judicial system where oath-taking brought about the closure of a case, failing any witnesses to the contrary, as Bruce Wells states in his illuminating article *The Cultic Versus the Forensic: Judahite and Mesopotamian Judicial Procedures in the First Millennium B.C.E.*,

When ancient near Eastern courts employed the judicial oath, they would require one of the litigants (less frequently, the witnesses for one of the litigants) in a trail to

swear by one or more divine beings that his or her version of events was true. Litigants who took such an oath won their case, because the oath was dispositive: it automatically disposed of the case in favor of the oath-taker (Wells, 2008: 207).

Such a judicial vestige could easily be resorted to when there is no forensic evidence regarding the case and there is good reason that it be resolved. In the case of an unsolved theft, there is little threat to the community, but in the case of a murder, there is the real threat to productivity of the land, as discussed above. Since no resolution is in sight, there would need to be a mechanism for the innocent to escape the calamity brought about by the unknown assailant. The oath would absolve the inhabitants of the local town, representing the entire nation in the land, from guilt in the matter of the murder and remove the threat of loss due to pollution of the land through the guilt of innocent blood shed.

In Bruce Wells' study *The Cultic Versus the Forensic*, he notes that the local court would have been stripped of the cultic mode of resolution of legal cases (Wells, 2008: 219). The oath, oracle and the ordeal were excluded for local use in legal cases, but the central sanctuary had recourse to these cultic resources in cases where no forensic evidence presented itself. He concludes, based on the work of Bernard Levinson, that:

Based on this argument, one might conclude, then, that Deuteronomy's authors were not averse to cultic judicial procedures and even wished them to remain in use in ancient Judah but to be practiced only at the central court at the central shrine (Wells, 2008: 219).

This conclusion creates a problem for the law of the 'eglā ritual. If the cultic judicial route is restricted to the central sanctuary and these are the cases referred to in Deuteronomy 17:8-9, then Deuteronomy 21:1-9 is, at least, an exception. However, since it appears to be at odds with the specific judicial instruction of Deuteronomy 17, it may be that something else is going on here. It may be that the priests are not performing a judicial role at all and their forensic role ends with the measurement, assuming the priests and judges are one and the same. Furthermore, the confession might not be an oath in the cultic sense since the claim of innocence is stating the obvious and, even if the murderer is one of the residents of the city concerned,

achieves no absolution for said murderer. There is no actual accusation directed towards the inhabitants of the city and, even if the corporate responsibility angle is invoked, this rite has no real defendant in sight. In Chapter 4 and 5 we will examine the possibilities should this be neither purely judicial nor cultic. The obvious problem, if the ritual is neither cultic nor judicial, is that the priests have no business there at all.

3.2.6. Verse 6:

וְכָל זִקְנֵי הָעִיר הַהוּא הַקָּרְבִּים אֶל-הַחֵלֶל יִרְחֲצוּ אֶת-יְדֵיהֶם עַל-הָעֵגְלָה הָעֲרוּפָה בַּנָּחַל:

Translation: *And all of the elders of the city nearest the body shall wash their hands over the broken-necked heifer in the wadi.*

3.2.6.1. Discussion of grammatical aspects

וְכָל זִקְנֵי: The inclusion of the qualifier כָּל serves to stress that the full number of elders of that city are to participate. The simple definite article rendered *the elders* would have sufficed, but the inclusion of all of the elders could have the force of disallowing an abstention, meaning that no one would be able to claim that they were not complicit, despite having known about the murder and its details.

3.2.6.2. The washing of the hands of the elders.

There are two issues with this verse. Firstly, if the ritual is intended to transfer any guilt to the animal and then dispose of said guilt, then the hand-washing should surely occur prior to the death of the animal, as in the case of other guilt or sin offerings (Lev 8:14; Num 8:12). The work of David Wright specifically looks at such disposal rites and he compares the rite of Deuteronomy to others mentioned in the Bible, and in Hittite and Mesopotamian texts to show how there are parallels which are explicitly elimination rites, those where the pollution of the people or articles is

transferred to an animal and then the animal is executed or dispatched to remove the pollution (Wright, 1987b: 399–403). Wright's conclusion is that this 'eglā ritual is an elimination rite, where "the killing of the cow is a reenactment of the murder which removes impurity of bloodguilt to a place where it will not threaten the community and its concerns; the flowing wadi further removes the evil to distant bodies of water." (1987b: 403). Wright also cites the "scapegoat" ritual of Leviticus 16 as an elimination rite, where the impurities are "banished from the sanctuary area and the community to a place where they will be innocuous" (1987b: 399).

One of David Wright's examples however, which comes from the Akitu festival of Mesopotamia, includes the use of the carcass of a dead animal where the priest "wipes the room with the carcass of the animal and then recites incantations of exorcism", after which the animal is disposed of in a river (1987b: 403). This allows for the use of a dead animal to remove pollution, but the Red Cow ritual of Numbers 19 provides an example which allows for purification of a contaminated people after the death of the animal by the presence of its remains. The Numbers 19 ritual remains a mystery in that the Priests who burn the animal to prepare the ashes are polluted before the animal even touches those who are impure through touching a corpse. Albert J. Baumgarten, in addressing this issue, proposes that there is a median of appropriate holiness for humans and, since the Priests have now touched something holy enough to remove impurity, they have come "closer to the sacred than one ought to be" (Baumgarten, 1993: 445).

The question of the ability of an animal to remove impurity once dead is the point. The 'eglā ritual has the hands washed over the carcass of the animal. In the light of Numbers 19 it seems plausible that the impurity could be absorbed by the animal and, due to its remote location, be rendered harmless. This does however mean that the elders must carry culpability of some form, either their own, which we have argued it is not, or in some representative way.

Ziony Zevit, noting the parallels between the 'eglā ritual and the red heifer ritual of Numbers 19, posits that in both cases it is only the immediate area of the slaughter which becomes defiled by the sacrifice (1976: 387). The implication for the Deuteronomy 21 ritual is that the pollution which formerly applied to the whole land now only applies to the localized area upon which the ritual was performed. Again

the question of the locus of guilt is raised. If the elders are not actually guilty, then in what way do their actions remove the consequence of the murder from the land?

3.2.7. Verse 7 and 8:

וְעָנוּ וְאָמְרוּ יָדֵינוּ לֹא שָׁפַכְהָ אֶת־הַדָּם הַזֶּה וְעֵינֵינוּ לֹא רָאוּ:

כִּפֹּר לְעַמְּךָ יִשְׂרָאֵל אֲשֶׁר־פָּדִיתָ יְהוָה וְאַל־תִּתֵּן דָּם נָקִי בְּקֶרֶב עַמְּךָ יִשְׂרָאֵל וְנִכְפַּר לָהֶם הַדָּם:

Translation: Verse 7: *They shall answer saying, "Our hands did not shed, nor did our eyes witness the shedding of this blood."*

Verse 8: *"Absolve your people Israel, whom you have redeemed, o YHWH, and let not innocent blood remain in the midst of your people Israel." So they shall be absolved of the bloodshed.*

3.2.7.1. Discussion of grammatical aspects

Verse 7 takes the form of a negative affirmation of both action *לֹא שָׁפַכְהָ*, and witness *וְעֵינֵינוּ לֹא רָאוּ*, which may have been an oath and even invoked the deity in the original form. The absence of the invocation may indicate that the verse is a later re-working.

Verse 8 is thoroughly Deuteronomistic, including the notion of atonement (*כִּפֹּר* – see later discussion) and the inclusion of the name *יהוה*, which appears also in verses 1, 5 and 9 and is part of making the entire ritual YHWHistic.

3.2.7.2. The Denial and the Prayer.

These two verses differ in nature in that the first is a denial, reminiscent of the cultic oath discussed above, and the second is a YHWHistic prayer. Ziony Zevit notes the

absence of an invocation in verse 7 and, quoting Alexander Rofé, the fact that the oath, in the Hebrew Scriptures, would more properly have offered a penalty for covert complicity, stating “If our hands shed this blood, may such and such occur to us...” (1976: 386). Positing an early origin for the denial, Zevit states that, “Only in the prayer in v. 8a is Yahweh invoked. It is the prayer containing a reference to Yahweh’s great act of redemption which converts the secular denial of complicity into a negative confession of innocence and, in effect Yahwehizes the ritual as a whole” (1976: 386–7). He goes on to state that there is a “thematic disharmony” between the denial of v. 7 and the prayer of v. 8a. The former implies no actual accusation of guilt, while the latter prays for the removal of guilt. It is this removal of guilt to which we now turn.

The 8th verse is a formulaic prayer which is YHWistic in nature and, further, uses the root כפר. The use of this root, which appears only three times in the book of Deuteronomy (twice in 21:8 and once in 32:43), makes the denial; the prayer for absolution and the declaration of the same, in verse 9, worth investigating in terms of the cult.

Duane Christensen makes the point that this is an unusual use of כפר since there is no blood sprinkled on an altar, nor are the priests directly involved, they are merely observers (2001: 458). He rejects the Arabic rendering of “to cover” in favour of the Akkadian meaning of “wipe off” or “cleanse” the guilt (2001: 458).

In his excellent study of the two lemmas כָּפַר and כִּפָּר, in his work, *Sin, Impurity, Sacrifice, Atonement, The Priestly Conceptions* (2005), Jay Sklar shows the two to be linked in that a price is exacted by an offended party and entirely at their discretion, which allows for the expiation of the offender (2005: 100). He states, referring to the removal of sins by means of a כִּפָּר-rite through a ransom, or כָּפַר:

Thus in each instance the offended party (i.e. the LORD) prescribes a special means (i.e. a כָּפַר) by which the penalty of sin could be avoided. By executing the כִּפָּר-rite (the purification offering [Lev. 10.17]; the scapegoat [Lev. 16.22]), or simply by

wearing the golden plate (Exod. 28:38), the sin was borne away (נָשָׂא עֹן), and the guilty party no longer faced punishment for it.

From both the verb סָלַח and the phrase נָשָׂא עֹן, then, it may be concluded that the verb כָּפַר in sin contexts refers to the effecting of a כָּפַר on behalf of the guilty party (Sklar, 2005: 100–101).

From Jay Sklar's study, it seems that in the Priestly literature, the word כָּפַר is not exclusively used in connection with blood rites and that it may simply refer to an expiation rite (כָּפַר) in which some price (כֶּפֶר) is exacted by the offended party in compensation for the offence and that the offender is then liberated from the required punishment (נָשָׂא עֹן) as a result of the paying of the price (Sklar, 2005: 46).

Sklar refers specifically to Leviticus 10:17 and the special means of effecting כָּפַר which excludes blood, but effects purgation (Sklar, 2005: 99). This means that the assumption that, since there is no blood involved, that it cannot be an expiation sacrifice, is false since a כָּפַר need not involve blood in every instance. The issue, rather, is that the 'eglā ritual does not occur at the central sanctuary which is prescribed by the Deuteronomist (Deut 12:11). Furthermore, the fact that the priests were uninvolved in the ritual does not rule out the possibility that it is cultic in nature, since, in the matter of the scapegoat (Leviticus 16:20-26), Aaron represents the people, but it is not stipulated that a priest should lead out the goat to the wilderness. It is also stipulated in the "red heifer" ritual of Numbers 19:1-22, that a "man" and, not a priest, should kill and burn the animal. These cases both show how an animal involved in a cultic ritual is slaughtered by someone other than a priest.

3.2.8. Verse 9:

וְאַתָּה תִּבְעֵר הַדָּם הַנָּקִי מִקִּרְבְּךָ בִּיְתֵעָשֶׂה הַיֵּשֶׁר בְּעֵינֵי יְהוָה:

Translation; verse 9: *So you shall purge the innocent blood from your midst, for you shall do what is right in the eyes of YHWH.*

3.2.8.1. Discussion of grammatical aspects

ובְּעֶרְתָּ הָרָע מִקֶּרְבְּךָ : Brown, Driver and Briggs, recognize the phrase and its variants, of which this is one, as Deuteronomistic. The phrase is the basis of Ziony Zevit's reconstruction of the pericope Deuteronomy 21:1-9 and occurs in Deuteronomy 13:6; 17:7, 12; 19:13, 19; 21:21 cf. v 9 22:21, 22, 24; 24:7 (Brown, 2000, בָּעֵר,).

בִּי־תַעֲשֶׂה הַיָּשָׁר בְּעֵינֵי יְהוָה : The phrase occurs exclusively in the Deuteronomist and in the Chronicles. The phrase is used in the histories as a standard for the identification of a good king (Deut. 6:18; 12:25; 13:19; 21:9; 1 Kgs 15:5,11; 22:43; 2 Kgs 10:30; 12:3; 14:3; 15:3,34; 16:2; 18:3; 22:2; 2 Chron. 20:32; 24:2; 25:2; 26:4; 27:2; 28:1; 29:2; 34:2)

3.2.8.2. Absolution of innocent blood.

That this ritual is seen by the Deuteronomist as a purgation is attested by the use of the term תִּבְעֵר meaning literally to utterly remove. Ziony Zevit makes the point that “the ritual did not resolve the problem of the unrequited blood; it absolved the elders of blood guilt which they had incurred due to reasons beyond their control” (1976: 381). Since the murderer would face execution for the crime and no expiatory sacrifice could be offered for the same, the ritual does appear to be dealing with a supernatural threat brought about by the shedding of innocent blood. The ritual takes care of no actual sin, but merely deals with the representative culpability of the elders from the nearest city to whom “liability was accounted” and to whom absolution was granted (Zevit, 1976: 381).

3.3. Summary

The ‘eglā ritual of Deuteronomy 21:1-9 is occasioned by the discovery of a murder and the absence of a known perpetrator. The remedy takes the form of a rite

including the forensic location of the nearest city, the neck-breaking of an unblemished animal by the leaders of that city in a remote and perennially irrigated location, which is rendered impure by the act of slaughtering and hand-washing which symbolically transfers the impurity from the actual location of the murder to the remote location rendering the threat to land and produce null and void. The negative denial leads to an absolution which purges the land of the threat.

The role-players in the ritual are, firstly the murderer, who would face execution if caught despite the occurrence of the ritual. Secondly there are the elders of the city who are the local clan-leaders who, with the Levitical cultic judges, or local priests, are to measure out the distance to the nearest town. The same judges could be the priests who preside over the negative confession, or oath, later in the ritual. The neck of the heifer is broken as opposed to cut so that it is not a blood ritual and thus not cultic. This Deuteronomistic emphasis is juxtaposed with the non-YHWHistic denial of v. 7 while the Deuteronomist once again YHWHizes the prayer and absolution of v. 8a and 9 by the invocation (יהוה) and the use of the terms כָּפַר and תִּבְעַר.

Ziony Zevit posits a pre-Israelite ritual which was to “ward off a curse”, possibly with animistic overtones. This ritual was refined in Early Israel, dealing with the same threat, but at this point the ritual was YHWHized and became an expiatory offering which was included in a collection called “bi’artā”. Only in the final form were the Priests introduced to represent the central sanctuary and the judges to represent the centralized administration. The problem regarding Zevit’s notion of the judiciary here is that the Judiciary was centralized at the cultic center according to Deuteronomy 17:8-13. It is more likely that these judges represent the cultic judiciary and are probably local Levites representing the central temple judiciary.

If Ziony Zevit’s three-stage reconstruction of Deuteronomy 21:1-9 is accepted, then the problems encountered in the pericope amount to the question as to how well the Deuteronomist has succeeded in “Deuteronomizing” the rite which he has included in the Deuteronomic legal corpus and whether the oversight of certain elements might have left us with a law which stands out as peculiarly un-Deuteronomistic. It is to these anomalies which we shall turn in the following chapter.

The exegesis of the 'eglā ritual appears particularly complex, with juxtaposing themes and practices which appear to sit uncomfortably in the setting of Deuteronomy. The complexity of the ritual could arise out of the long history of its development and the difficulty that the Deuteronomist would have had in reconciling such an ancient ritual with his particular agendas. What follows is an analysis of the themes and stipulations of the ritual in terms of the agendas of the Deuteronomist which were identified in chapter 2 above.

Chapter 4

An anomaly within the Deuteronomistic corpus?

4.1. Introduction

Having examined the agendas of the Deuteronomist and identified some of the problems evident in the text of Deuteronomy 21:1-9, the two have to be brought together in order to test whether the text in its final form reflects these agendas. The work of Ziony Zevit on the development history of the pericope and Thomas Römer's reconstruction of the redaction history of the Deuteronomistic History, give two theories which impact this study. Ziony Zevit's three-stage development from a pre-Israelite rite of placation of a netherworld god, to the present Deuteronomistic form in which the ritual is stripped of superstition and cultic content leaves what he calls a "quasi-cultic" rite overseen for administrative purposes only, by the priests of the cultic center. Thomas Römer however posits a three-stage redaction of the whole Deuteronomistic History. Applied to the text in question it allows for further refinement from the 7th Century BCE down to the Persian period.

The fact that the rite allows for the slaughter of an animal in a non-cultic setting and that the priests appear to play such a minor role suggest that the rite received little or no reworking under the second temple priestly redaction of the Torah in its final form. However, the text now needs to be examined under the headings of the three agendas identified in chapter 2 in order to establish exactly how the (Zevit, 1976) 'eglā ritual fits with these agendas.

4.2. The Monarchy

Referring to Bernard Levinson's study *The Reconceptualization of Kingship in Deuteronomy and the Deuteronomistic History's Transformation of Torah* (2001), the five areas of continuity and discontinuity of the Israelite monarchy with that of other Ancient Near Eastern monarchies gives a broad outline for a study of Deuteronomy 21 as a possible anomaly within the Deuteronomistic work.

Firstly, the divine adoption of the king, a notion shared with surrounding cultures, where YHWH “affirms the Davidic monarch, both legally adopting him and appointing his earthly counterpart as head of the divine council:

He shall cry to me, “My Father are You!
My God and Rock of my salvation!”
As for me, Firstborn will I appoint him,
Most High [‘Elyôn] to all the kings of the earth! (Ps. Lxxxix 27-28)” (Levinson, 2001: 513).

The logical result of this appointment is that the king would become the spokesperson of the divinity and thus receive legislation directly and issue it to the people. In the case of Deuteronomy however, this position is downplayed and Levinson identifies the lack of distinctiveness in the continuity with surrounding nations as the motivation for the Deuteronomistic programme of disempowerment of the king. The request of the elders of Israel illustrates just such a tendency when they “insist that Samuel should erase Israel’s religious and political identity; ‘Now, appoint a king for us to govern us *like all the other nations!*’” (1 Sam. Viii 5) (Levinson, 2001: 518). This, says Levinson, led to a “sharp polemic” against the threat which this posed and hence the legislation of a distinct notion of monarchy in Israel where, though the adoption of the king is retained as a motif, the jurisdiction of said king is severely curtailed.

Since the relationship of the king to the law, in the book of Deuteronomy, is one in which he too is subject to the law, given as neither promulgating nor presiding over it, the king appears merely as one required to uphold the law by setting the example of study and obedience.

This relationship to the law is not consistent throughout the Deuteronomistic History, since in the case of David and Solomon, there are instances in the narrative where they perform a judicial function.

The king’s judicial function, as presupposed by the narratives, is not restricted to being either a final court of appeal (as in the case of the woman from Tekoa in 2 Sam. xiv 1-24) or a protector of the poor (as in the case of the ewe lamb in 2 Sam. Xii 1-14). The Deuteronomistic Historian also portrays the monarch as arbiter of ambiguous legal cases, in which there are no witnesses and in which there exist no

empirical criteria for deciding between the competing claims of the two litigants (1 Kgs. iii 16-28) (Levinson, 2001: 519).

The legal corpus of Deuteronomy, especially chapters 16 and 17, systematically strips the monarch of jurisdiction over the cult, judiciary and military, while the narratives of the Deuteronomistic Historian appear to reinstate the king as a judge, cultic patron and warlord with full sovereign powers. This anomaly may best be explained in terms of the long composition history of the Deuteronomistic Historian. Taking into account Thomas Römer's reconstruction of the Deuteronomistic Historian (2007), there is good reason to place the final form legal material of Deuteronomy, and especially those parts of the book which limit the jurisdiction of the king, later than the 7th century BCE. Römer posits a first compilation, during the Assyrian period, comprising a collection of Deuteronomistic scrolls including the legal material which is "mainly preserved in Deut. 12-25"; a conquest account; and a chronicle of the kings which elevate Josiah to being the true Davidic king. In this early form the distinctive, limited powers of the king were not at issue and there remains quite the opposite flavor (2007: 71). This early collection then supports the Josianic reforms in which there was a political and religious centralization due to the macro-political situation in the Levant which was favourable to Israel (2007: 71). Römer's theory of a three-stage redaction of the Deuteronomistic Historian overcomes the problem of the limitation of the king's powers coming into legislation at exactly the time when Josiah was recorded as centralizing and reestablishing the monarchy as the legitimate administration in Israel with patronage of the cult and oversight over the judiciary. Since no monarchy existed during the exile, legislation which limited the powers of the king and centralized the administration around the cult would not have evoked a negative response.

Despite his recognition of the pre-exilic origins of the Deuteronomistic Historian, Thomas Römer, against Martin Noth, posits a first full compilation of the history of Israelite monarchy during the exile, claiming that prior to the exile, no such history could have been conceived (2007: 113). It is this history which, compiled by the scribes of the intellectual elite, attempts to make sense of the destruction of Jerusalem and subsequent deportation.

The positive attitude towards kingship shown particularly in the David, Solomon and

Josiah narratives, is posited by Thomas Römer as monarchic and not exilic (2007: 142–3). In general, then Römer sees the positive attitudes towards the monarchy in the Deuteronomistic Historian as reflecting the view of the monarchic scribes, while the more negative attitudes, for example in 1 Samuel 8, reflect the attempts of the “mandarin”⁵ elite scribes to make sense of the exile after 587 BCE, giving the disobedience and apostasy of the kings as the reason for the end of the monarchy.

This raises the question of why the law of the king in Deuteronomy 17 has such a restrictive attitude towards the monarchy, since Römer seems to place the law in the Josianic era. His explanation is that, in the Josianic administration, while the national policy was an expansionist one, this was very limited in practice⁶ and, the monarch was significantly “controlled” by the Deuteronomistic scribes and councilors (2007: 140). The problem with this claim of scribal control is stated by Römer himself: that, concerning the law in Deuteronomy 17:14-20, the “presence of such a law in the Josianic edition of Deuteronomy would be astonishing: it has no parallel in other Near Eastern law codes” (2007: 80). So Römer both places the law in the Josianic era and calls such a placement “astonishing”.

Probably as a result of such anomalies in the study of the development of the Deuteronomistic Historian, Römer calls the Deuteronomistic attitude towards the monarchy “ambiguous” (2007: 141). Consequently, the Deuteronomist of the Exilic era, which reflect on the monarchy, present juxtaposed negative and positive views of the future of the monarchy, evaluating kings against the Deuteronomistic law and especially against the two-fold criteria of cultic centralization and exclusive veneration of YHWH (Römer, 2007: 140–1). The complexity of the evaluation of the lives and rule of the kings is fundamentally in line with Hebrew literature which may hold one view alongside another of different interpretation. Benjamin Sommer’s, in his article, *Functional Interpretation and Biblical theology: Reflections on Judaism as*

⁵ In Römer’s argument as to the nature of the Deuteronomist, he posits a scribal group identified with Shaphan the scribe and Hilkiyah the high priest of 2 Kings 22-23, who are of the elite, even royal, circle having an intellectual approach which would lead to their construction of a history to explain events, rather than a utopic prophecy or mythical analogy. He calls this type of approach “mandarin” (Römer, 2007: 111–2).

⁶ Römer argues that there was little documentary evidence for an extensive geographical expansion during Josiah’s reign, apart from territories lost as an Assyrian vassal and possibly the territory of Benjamin, but the point of the expansionist narrative was to stake a claim for the inhabitants to be rightful heirs of “Israel” (Römer, 2007: 54–55).

a Civilization in Relation to Scriptural Hermeneutics (2006), writes concerning the harmonization of contradictions in the books of 1 and 2 Chronicles, noting the ease with which the authors both interpret earlier material and yet leave the that material in its original form alongside the newer interpretations. He writes on the complexity of editorial work, extending his observations beyond and to the later post-Biblical Rabbinical work:

Thus the authors of Chronicles allow later readers either to admire the clever nature of Chronicle's harmonizations or perhaps to disagree with those harmonizations. The same may be said of minority opinions in rabbinic literature, which are at once overruled and carefully preserved. *Shivim panim la-Torah* (There are seventy facets to the Torah) – and conative striving is one such facet. But a truly Jewish reading of the Torah, not to mention a truly interesting reading, cannot limit itself to any one facet; rather, Jewish readings need to recognize that *eilu ve-eilu divrei Elohim hayim* ("Both these and those are the living words of God") (Sommer, 2006: 154).

While Sommer refers to the final, Torah, form, the principle may be cautiously applied simply because it is the only form we have. The reader is left to find a way to receive the various "facets" of the work while accepting that each of the facets is "the living words of God."

Further to the approach which allows for the juxtaposition of various interpretations simultaneously, is the view of Gary N Knoppers. In his thought-provoking article "*There was None Like Him*": *Incomparability in the book of Kings*, (1992), which argues that the judgments of the kings in the Deuteronomistic Historian is not meant to be a blanket sanction or judgment of the entire reign of the king, but that "each of these judgments is associated with specific features of a monarch's reign."

Bringing the discussion back to the pericope in question in this study: while the discussion in Römer's work uncovers a labyrinth, which is impossible to navigate reliably towards a monolithic Deuteronomistic ideology or theology of the monarchy, some central criteria for faithful royal administration may be distilled.

Firstly; the king is subject to the law of Deuteronomy and judged according to it. Secondly; the king is somehow responsible for national, centralized cultic worship while not being the patron of the same, and thirdly; the king is responsible for

ensuring monotheistic YHWH worship. The fourth clear virtue of the faithful king is that he will uphold justice while merely enabling, not controlling, an independent judiciary.

The awkwardness of the Deuteronomist's ambiguous attitude towards the monarchy is that the king is both restricted by the law and then judged by the success of aspects of the administration over which he has little or no jurisdiction.

In Deuteronomy 21:1-9 there appears at first reading to be no royal involvement in either the drafting or practice of the 'eglā ritual. The first time the possibility of royal involvement arises in the pericope is, arguably, the mention of the זְקֵנֵי וְשֹׁפְטֵי in verse 2. This raises the question of who exactly these two groups of people are. There seems to be no dispute regarding the elders, who would be the local leaders of the cities in question, identical to the traditional clan leaders. The identity of the judges is a matter of some debate. If they are representatives of the monarch, as suggested by Ziony Zevit, providing representation of the monarchy then the provision of the law is at odds with the stipulations of Deuteronomy 16:18-20 which is neither addressed to the monarch, nor affords him jurisdiction over the judiciary.

Against the notion that the judges represent the monarchy, Mark Leuchter posits the theory that the judges are representatives of the centralized cult and not the monarchy. The plausibility of the theory is that it agrees with Bernard Levinson's recognition that, with the centralized cult and the decommissioning of the local cult sites, the local Levites, who would have served at the regional shrines would have been unemployed. The Deuteronomistic programme of centralization would have received little support from the local priests if it had left them without purpose or livelihood. The solution was that these "Levites within your gates" were employed as local judges which provided them with employment. This matter will be further discussed below, but it is fair to conclude the judges do not represent the monarchy.

In Deuteronomy 21, the absence of a royal representative would fit with the restrictions of Deuteronomy 16 and 17, making at least this point consistent with the Deuteronomistic agenda of subordination of the monarchy to the law, the position recognized as unique in the Ancient Near East by Bernard Levinson, one which

delimits the power of the monarch, who is subjected to the law of the book (2001).

In the light of the fact that Deuteronomy 21:1-9 is addressed to no-one in particular in Israel, it thus seems fair to conclude that the role of the king in this law, according to the four criteria above, is that he would support and even ensure the employment of the 'eglā ritual in the event of such a "body" being discovered. Furthermore, he would make sure that the proper parties were presiding over the ritual, ensuring that all the provisions were complied with.

We proceed to look at the involvement of the judiciary in the ritual and its consistency with the Deuteronomistic agenda regarding the office.

4.3. Judiciary

The issue of the judiciary in Deuteronomy 21:1-9 centers on the fact that this ritual is a response to a legal situation for which there is no evidence. The question of judiciary, as raised in chapter 2, is that the legal code requires the appointment of judges in the local areas to deal with local matters with recourse, not to the king as would be the custom in the Ancient Near East but, to the central cultic sanctuary. The questions to be answered regarding the judiciary are, firstly; what role the judges play in the ritual; secondly, who the judges are; thirdly, what the nature is of the legal process if this difficult case is not to be referred to the central sanctuary and; fourthly, how the view of the judiciary presented in the pericope fits with the Deuteronomistic agenda.

The first appearance of the **שֹׁפְטִים וְקִנְיָדִים** is in verse 2 where, the judges and local clan elders together perform the forensic duty of measuring out the distances to the cities so as to identify the one closest to the corpse. The function is to ensure that, while the interests of the local cities are upheld by the elders, the judges ensure that the requirement of the ritual is carefully followed by the local elders and that there is a neutral party to adjudicate in the event of a dispute.

The judges of verse 2, as argued above, are the local Levites who have been redeployed, after the closing of the local cultic shrines under the influence of the

Deuteronomistic centralization programme. These local Levites act as representatives of the central cultic sanctuary in the local setting (cf. Leuchter, 2007). Ziony Zevit makes these judges royal representatives, but in the light of Deuteronomy 16:18-20 and Deuteronomy 17:8-13, which both appoint judges and officials without reference to the king and prescribe a system of appeal to the cultic center, rather than to the royal court, there appears to be little or no link between the monarchy and the judiciary (Zevit, 1976: 382; cf., Levinson, 2001). Since these judges, in Deuteronomy 21:1-9, are not representatives of the monarchy, but of the cultic judiciary, their function could be part forensic and part cultic. As argued above, the likelihood is that the judges, who are Levites (vs2), and the priests (vs 5) are one and the same. If this is the case, then two questions are raised: firstly, why is a difficult case being adjudicated, or at least presided over, by local judges? And secondly, does the presence of the priests mean that this is a cultic rite in a local setting against the centralization agenda of the Deuteronomist? A subsidiary question: whether the denial in verse 7 is, in fact a cultic oath. This, we have argued above is not the case since there is neither an invocation of YHWH, nor a curse formula for a false oath. The second question will be dealt with under the heading “The Cult”.

The first question refers to the entire purpose of the ritual. The presence of the priests only after the slaughter of the heifer may raise questions regarding the cultic nature of the ritual. However, if the purpose is judicial, then the presence of the priests, representing the central sanctuary, serves to ensure that proper jurisprudence is followed. But in the light of our discussion above on the shift from the use of cultic oaths, ordeals and oracles to the use of more forensic judicial methods, it would be unlikely that such a rite would be fulfilling purely judicial function. According to Bruce Wells, based on the argument of Bernard Levinson, the use of cultic judicial methods were reserved for use in the central sanctuary and we thus can conclude that they would not have been employed in this local setting, ruling out the possibility of a purely judicial function (Wells, 2008: 219). This view would accord well with the view of Ziony Zevit that “liability was accounted to the elders of the city closest to the site of the corpse” and there thus being no *real* guilt on the part of the elders of the city, again, making it unlikely that the function of the ritual is a purely judicial one (Zevit, 1976: 381).

The assertion of Jeffrey M. Cohen (1988: 54) that the failure of the nearest city to protect the traveler or sojourner would make them actually culpable in the slaughter is one which raises further question about the nature of that culpability when the punishment for murder is execution. If this was the case then the ritual might well have a judicial function in that it was a cultic-judicial oath which absolved the elders of that culpability. Again, the fact that it wasn't a typical formula for an oath, with invocation and consequence, means that it is unlikely that the purpose is judicial.

In the light of the above, it can be asserted that the priests who are brought near in verse 5 are probably the same persons as the judges in verse 2, but that they are performing some function other than judicial. This deals with the question of a local resolution of a difficult judicial conundrum, which, since there is no actual accused, does not require adjudication and is dealt with by the practice of the ritual.

The scope of the judiciary's involvement in the 'eglā ritual, then, is one in which the representatives of the central sanctuary are called upon to preside over the forensic measurement of the distances to the local cities in order to ensure that the proper responsibility is apportioned. Although the judges would have been Levites, when the same Levites appeared for the second time in verse 5, they appeared as priests and not judges. Their function at this point would have excluded any judicial content, but would rather have been to oversee the proper performance of the ritual.

While this assertion pertains to the final form of the ritual, there is no reason to believe that the 'eglā ritual never performed a judicial function. The three-stage process of development which Ziony Zevit (1976) posits allows for stages which may have included a judicial function. In the pre-Israelite ritual, Zevit states that its purpose was "both juristic and prophylactic centering around a propitiatory sacrifice" (1976: 389). In this form there was no central sanctuary and the judiciary would have consisted purely of local clan leaders. In the early Israelite ritual, the practice of local sacral slaughter would also have allowed for "the same juristic and prophylactic reasons" (Zevit, 1976: 390). Zevit then posits that the judges were introduced "at some later date when the Deuteronomic scribe tried to accommodate the demands of the ritual to those of the royal administration" (1976: 390). Against this I would argue that a late "Deuteronomic" edition of the ritual would not have presented the judges as representatives of the royal administration, but rather as

representatives of the cultic center. This of course assumes that, while Zevit writes of the “deuteronomic movement”, he means, in terms of this study, the Deuteronomistic Group or School, as proposed by Thomas Römer (2007).

If there is no judicial content in the ritual after the measuring of the distances, the obvious question is: to what extent is the ‘eglā ritual a cultic one? In the light of the programme of cultic centralization of the Deuteronomist, there is a problem with local cultic sacrifice. The question, in terms of Bernard Levinson’s statement of the Deuteronomistic programme of cultic centralization and local secularization, is whether this is in fact a cultic practice which goes against the Deuteronomistic programme (Levinson, 1998: 51).

4.4. The Cult

Ziony Zevit’s term “quasi-cultic”, which he gives to the rite forces one to ask the question as to what the nature of the rite is if it is only “quasi” cultic.

I have argued above that the priests in verse 5 are not performing a judicial function, which must lead to the conclusion that it is a cultic function, even if that is only one of representing the cultic center to ensure, as argued by several commentators, that the ritual is correctly performed. Since the priests are only required to step forward after the slaughter of the animal, the killing itself is not cultic. Furthermore: the absence of blood, suggested by the neck-breaking, points away from a cult-killing. The point at which the priests enter the picture is when the elders are about to make their denial.

If as claimed by Gerhard von Rad, the presence of the priests is “not a particularly skillful addition”, then this late addition is a Deuteronomistic one which should serve to promote the cultic agenda of centralization (1966: 135). However, if this is a cultic ritual and it is occurring in a local setting, then it appears to be anomalous. Perhaps the Deuteronomist should have left the priests out entirely.

The denial of the elders has been dealt with above and it has been shown that it was not an oath in a cultic sense as part of a cultic-judicial rite. The pronouncement of absolution by the priests raises the question as to the basis of the absolution,

especially if the sacrifice is not a cultic one. Some commentators have argued that the basis of the absolution is the grace of YHWH since there is no actual cultic sacrifice but, while the grace of YHWH would be the basis of all absolution in the light of the very existence of Israel stemming from the benevolence of YHWH, it is worth investigating how the ritual plays a part or whether it is superfluous to the absolution and thus performs some other function. We must examine whether there is a cultic element in the ritual.

It is the study of Jay Sklar on the lemmas כִּפָּר and כִּפָּר which sheds an interesting light on the issue of whether this is a cultic rite. The presence of the word כִּפָּר which would imply some cultic content and, at first it appears that the use of the word is peculiar and thus uniquely Deuteronomistic. As Sklar points out however, the work in the Priestly laws is used alongside the noun כִּפָּר to indicate that some price is paid to release the offender in a legal situation from their obligations regarding punishment (2005: 99). The defendant is thus set free upon payment or performance of some כִּפָּר, or ransom, but only in the context where this is allowable. Clearly, this is not permitted in the case of the actual perpetrator of the crime, since execution without compromise or prejudice is required. But in the case of the elders of the city, the practice of providing of a כִּפָּר could be allowed since they carry no actual guilt, but culpability is based on their proximity to the body. If Jeffrey M. Cohen's (1988) argument is considered and the elders carry real guilt based on their negligence, then it is plausible that the 'eglā ritual would fulfil the function of a כִּפָּר which would effect the כִּפָּר. Sklar further shows that blood is not a requirement for such a כִּפָּר which means that the absence of blood in the 'eglā ritual does not exclude cultic content.

In the light of this, it does appear that the 'eglā ritual is plausibly purely cultic, and there is no need to call it "quasi-cultic" as does Ziony Zevit, except in an attempt to maneuver out of the problem that, in Deuteronomistic legal terms, cultic rituals must all occur at the central sanctuary.

I argue, based on the parallels of the "scapegoat" ritual of Leviticus 16 and the "red

cow ritual” of Numbers 19, it was possible to have a cultic rite outside of a cultic sanctuary. Both of the above rituals are conducted partly by laypeople, outside the cultic sanctuary and with priests in attendance but clearly perform a cultic function. On this basis it is plausible that the Deuteronomist adopted the exception and applied it to this particular ritual for reasons which will be proposed in Chapter 5.

David P Wright’s theory that this is a “riddance” ritual aimed at re-enacting the killing at a remote place thus, through the hand-washing, removing the pollution caused by the shedding of innocent blood to the remote place never to be farmed, is plausible in the light of the above. It is entirely possible that the Deuteronomist had conflated two motifs, in the כִּפָּר and the רָחַץ (cf. Deuteronomy 23:11) so that the offence is propitiated and the pollution is transferred in the same ritual. In the case of the latter, while the practice of washing, paralleled in Deuteronomy 23:11, clearly has a cultic impact in terms of pollution, it must occur outside the camp and thus would fit with the notion of a ritual of redemption and removal of pollution occurring somewhere other than the central sanctuary.

4.5. A Reconstruction

Verse 1 presents the legal predicament of the unknown murderer, the occasion for the rite in its original form. It would remove the essential element of the *raison d’être* of the ‘eglā ritual if the occasion of the discovered body were absent. The result of the dead body on the land could originally have been a defilement of the land on which it lay, “leading to the cessation of agricultural activities there”, as outlined by Ziony Zevit after the work of Alexander Rofé (1976: 379). The presence of the corpse gives rise to the need for the ritual which follows and evidences an understanding that the land is affected by the death and there is a corporate responsibility and even culpability for the death. Ziony Zevit contends that the threat is a “supernatural” one and cites H.J. Elhorst as writing that the original rite was a sacrifice to a cthyonic deity (Zevit, 1976: 382). The Deuteronomising of the rite, then made it YHWHistic by removing any reference to the cthyonic deity.

The phrase “*in the land which the lord your God is giving you to possess*” is clearly Deuteronomistic, probably finding its origins in the Josianic period where there was a

polemic of entitlement which is presented in the Deuteronomistic Historian as an expansionist policy (Römer, 2007: 54–55). It is in line with the Deuteronomistic theme of possession of the land, which is given to the people of Israel by the Lord God.⁷

Verse 2 introduces both the elders and judges. The elders, as argued above, would have been part of the original ritual since the system of clans would have been pre-monarchic and it would have satisfied the later, Deuteronomistic centralization sensibility to include the judges who represented the Jerusalem court. Again, the responsibility for the carrying out of the ritual would have been adjudged to have fallen to the city nearest to the corpse even in the original pre-Israelite ritual.

Verse 3 reverts again to the elders who are commissioned to take the heifer to the river valley. Ziony Zevit argues for an early use of male animals, making the female animal (heifer) a Deuteronomistic variation, after the P tradition, while the use of an unworked animal denotes its ritual purity as “unblemished” (Zevit, 1976: 385–6).

Verse 4 introduces the setting of the rite in a remote location with a perennial river. While this is plausibly part of the original ritual, the breaking of the neck does raise the question of originality. The neck is broken as opposed to cut which means that this is not a blood ritual. In the original rite there was no reason not to shed blood, but it is most likely a Deuteronomistic edition which excludes the blood because blood sacrifices are reserved for the central sanctuary. Subtly, yet horrifically, in favor of the view is the opinion held by several scholars⁸, that the slaughter is symbolic of the punishment to be meted out to the unknown assailant, which would take the form of stoning and not cutting.

⁷ The theme is pervasive throughout the book of Deuteronomy, especially in 9:6; 11:31; 15:4; 16:20; 17:14; 19:2; 19:14; 21:1; 25:19; and 26:1. It is also identified by Mosheh Weinfeld as a key tenet of Deuteronomistic phraseology (Weinfeld, 1972: 1–2).

⁸ Keil and Delitzsch (Keil & Delitzsch, 1951: 405); S. R. Driver (Driver, 1902: 242) and W.B.C. Christenson (Christensen, 2001: 458) among others argue for this substitution, but Callum Carmichael argues against it on the basis that the blood avenger should execute the animal as if it is to be substitutionary. The argument seems tenuous since, if the ritual is symbolic, surely a symbolic blood avenger may execute the animal.

Verse 5 is generally agreed to be late⁹, introducing the priests into the ritual as representatives of the central sanctuary. In line with Thomas Römer's identification of the priestly and scribal nature of the Deuteronomist, the verse anchors the rite in the Deuteronomistic framework. Esias E. Meyer, in his study of the identity of the Priesthood in the Persian period, reinforces the claim that there was a deliberate polemic on the part of the priestly writers in which their position of influence and control was strengthened, giving them a "special position of privilege and power within Achaemenid Yehud" (Meyer, 2012: 5). He goes on to say that "executing sacrifices and declaring people clean were not innocent acts of maintaining a cultic system, but were acts of expressing power" (Meyer, 2012: 6). The presence of the priests introduces the connection of the rite to the central sanctuary which finds itself comfortably within the Josianic era of cultic centralization, but the later declaration of the priests could be a much later introduction, in the Persian period.¹⁰

Verse 6 describes the hand-washing, which has raised some debate. Ziony Zevit posits a symbolic expression of innocence and cites Matthew 27:24 as a parallel where Pontius Pilate washes his hands at the trial of Jesus. This seems anachronistic in a world where water in cultic rites symbolizes purity and the riddance of pollution as posited by David Wright. He makes a good case for the notion of an elimination rite where the guilt is washed from the hands of the elders to the water, to the heifer and on to the stream which carries it away (1987b: 401–2). This would make better sense of the hand washing, making it less of a symbolic act than a cultic removal of impurity and leave it in the realm of a primitive riddance rite.

Verse 7 could have originated as a cultic oath with an invocation of the deity. In that form it would have also included a penalty for false testimony (cf. Zevit, 1976: 386). The reformulation of this verse would be on account of the local setting. Since all cultic judgements were to be made at the central court at the temple, what was originally an oath formula with the form of invocation – denial – penalty, was recast as a simple denial.

⁹ Beginning with Gerhard von Rad (von Rad, 1966: 135), the introduction of the priests into a rite which appears non-cultic has been seen by several scholars as a Deuteronomistic addition to the rite (cf. Wright, 1987b: 391) .

¹⁰ Mosheh Weinfeld (1972: 2), includes cultic centralization as one of the central themes in Deuteronomistic language, but Bernard Levinson brings it to center stage of the programme of the Deuteronomist (1998).

Verse 8 introduces language which is fundamentally Priestly, but may give the key to the use of the rite in the local setting. Jay Sklar's study (2005) of the relationship between the lemmas כָּפַר and כִּפֹּר gives insight into the intention of the rite, but highlights the unique use of language unfamiliar in the Deuteronomistic landscape. This late addition to the rite, evidently Priestly, solves for us the problem of the local setting of the rite and the lack of a blood sacrifice in the removal of guilt, which becomes a redemption offering, releasing the offenders, in this case the elders, from liability (Sklar, 2005: 99). The addition of the invocation of YHWH is especially monotheistic and hence Deuteronomistic, but also highlights the specific problem addressed by the entire ritual, the effect of innocent blood on the land. This prayer is what "Yahwehises the ritual as a whole" (Zevit, 1976: 387).

There is a conflict between the denial of verse 7 and the prayer of verse 8, since the former assumes that there is only suspicion, but the latter uses the language of expiation, implying a real guilt (cf. Zevit, 1976: 387). This reinforces the idea that the denial could have originally been a form of oath which was aimed at vindicating the suspects, while the Deuteronomistic form of the ritual speaks of actual atonement and expiation, the language of guilt purged, which is Deuteronomistic.

It is also worth noting the use of the Chiasm whereby the verse is bracketed by the two words כָּפַר and וְכִפֹּר, which emphasizes the nature of the atonement. Since the atonement is both contingent upon divine acceptance and divine granting, it drives home that it begins and ends with the divine being. Expiation is not guaranteed, but dependent on the benevolence of YHWH. This adds further weight to the notion that this could be a rite which is performed in order to avert the repercussions of an offence upon the acceptance of such offering by an offended party (cf. Sklar, 2005: 99)

Verse 9 closes off the pericope with the conclusion of the matter. The guilty are declared innocent and the threat to land and people is averted. It continues the language of redemption and, while it does not deal with the guilt of the actual killer, it purges the pollution from the midst of the city. It is this verse which includes it in what J. L'Hour, cited by Ziony Zevit, calls the "bi'artā collection" from the phrase "you will

remove evil/<guilt for> innocent blood from your midst / from Israel" (Zevit, 1976: 379).

A schematic representation of the translation, with the Deuteronomistic additions bracketed, would look like this:

1: If a body is found slain [in the land which the lord your God is giving you to possess]¹¹, having fallen in the open country, and it is not known by whom they were struck.

2: Then your elders [and your judges]¹² will go out and measure the distance to the cities round about the slain

3: Then the elders of the city nearest to the slain body will take a [heifer]¹³, [which has been neither worked nor yoked]¹⁴.

4: And the elders of that city shall bring the [heifer]¹⁵ down to a wadi with a perennial stream, which will neither been tilled nor sown and they shall [break the neck]¹⁶ of the [heifer]¹⁷, there in that valley.

5: [Then the priests, the sons of Levi, shall come forward, whom YHWH your God has chosen to serve him and bless, in the name of YHWH, for they shall pronounce judgment in all matters of dispute and assault]¹⁸.

6: And all of the elders of the city nearest the body shall wash their hands over the [broken-necked heifer]¹⁹ in the wadi.

7: They shall answer saying, "Our hands did not shed, nor did our eyes witness the shedding of this blood."²⁰

¹¹ The Deuteronomistic land possession formula.

¹² Judges are Deuteronomistic introduction representing the central court at the sanctuary, they are local Levites.

¹³ Probably originally a male animal, but later a female became the norm.

¹⁴ In line with the Priestly concept of an unblemished animal.

¹⁵ In line with the Priestly concept of an unblemished animal.

¹⁶ The Deuteronomistic programme of cultic centralization and the secularization of the local led to the need to exclude a blood sacrifice. The original pre-Israelite ritual and even early Israelite ritual was a blood-rite.

¹⁷ See footnote 9.

¹⁸ This entire verse represents the elite scribal and priestly hand involved in the Deuteronomistic group (cf. Römer, 2007)

¹⁹ See footnotes 9 and 11.

8: [*Absolve your people Israel, whom you have redeemed, o YHWH, and let not innocent blood remain in the midst of your people Israel.*] So they shall be absolved of the bloodshed.²¹

9: [*So you shall purge the innocent blood from your midst, for you shall do what is right in the eyes of YHWH*].²²

4.6. Summary

There is a strong case to be made for the antiquity of the ritual which was reformulated and used by the Deuteronomistic authors. Ziony Zevit's three-stage development of the pericope includes a pre-Israelite ritual, which, due to the lack of a sensibility regarding cultic centralization, would have included a ritual blood sacrifice, aimed at warding off a curse. The progress to early Israelite law, or what Zevit terms the *bi'artā* collection, included the local sacrifice and incantation which both broke the curse of blood pollution on the land and rendered the immediate locale of the sacrifice unfit for agriculture. The third stage of development, under the Deuteronomistic school, led to a neck-breaking ceremony, overseen by priests who represented the central sanctuary and assisted by judges of the central administration (Zevit, 1976: 389–90).

The reconstruction of Ziony Zevit posits a refinement of the ancient magical rite according to Israelite practice until its final form in Deuteronomy. In order to do justice to the diachronic treatment of the final form of the text, the work of Thomas Römer (2007) must be taken into account. The development at the hand of the Deuteronomistic school, according to Römer, takes in further sensibilities before its inclusion in the Torah under the Priestly hand (cf. Zevit, 1976: 390). It is worth examining whether there could be identified in Deuteronomy 21:1-9, any of the three redactional stages identified by Römer which could further point to the nature of the *'eglā* ritual.

²⁰ Verse 7 excludes both an invocation of the deity and a commensurate penalty for a false oath.

²¹ Verse 8 employs the language of redemption through making an offering.

²² The formulaic ending is typically Deuteronomistic (cf. Deut 19:13).

That this ritual could have been included in the pre-exilic form of the Deuteronomic corpus would, according to Römer, be evidenced by an emphasis on centralization (2007: 58). The final form of the rite is in line with the idea of centralization of the cult and judiciary and the delimitation of the monarchy by removing the same from his jurisdiction. The *‘eglā* ritual is addressed to the people of the cities in question and not to the king. The performance of the ritual is required by the elders with the priests of the central sanctuary in attendance. The linking of the ritual to the central sanctuary and the absence of the royal administration in the carrying out or initiation of the *‘eglā* ritual, identifies the rite with the Josianic era (Assyrian) in the late 7th Century B.C.E. It appears to be addressed to a people still living in the land in question and, as argued above, is not inconsistent with the Deuteronomistic programme of centralization.

The question is raised as to whether there is evidence of later work at the hand of an editor outside of the land in the exilic, Babylonian period, or one of the Persian period who would have the sensibilities of those returning from exile.

The Babylonian period, without land or Temple, raised new sensibilities in the Deuteronomistic group. The absence of the monarchy meant that more emphasis could be placed on the role of the priesthood and the scribal elite, thus further moving the notion of the king to the fringe. In the *‘eglā* ritual, the addition of the priests at a point where they appear not to be needed (verse 5), if this is a late addition, could be seen as an attempt to place an emphasis on the central sanctuary and further elevate the role of the priests. Römer sees this emphasis as evidence of exilic work on a Deuteronomistic text even, at a time when the “temple is partially destroyed” (2007). The Persian period develops its own sensibilities with an emphasis on exclusiveness, with an “ideological opposition between ‘Israel’ and the *‘goyim’*.” (Römer, 2007). Looking at the work of Esias Meyer on Priestly identity in the Persian period (2012), it is possible to see, from his identification of a powerful polemic in favor of Priestly pre-eminence, that the placement of the priests in the *‘eglā* ritual could be as late as the Persian period (cf. Römer, 2007).

Ziony Zevit examines Alexander Rofé’s parallel with Hittite practice, arguing for the eventual abrogation of the practice, probably much later in the Second Temple period, in the Mishnah, in the tractate Soṭa 9:9 (1976: 379). This would fit with the

final promulgation of the Torah once the “Deuteronomistic school” had “disappeared” (Römer, 2007: 183).

In the following chapter (ch 5) we return to the question posed at the beginning of the study: Does this law in Deuteronomy 21:1-9 follow the overarching agendas of the Deuteronomist?

Chapter 5

Conclusion

The Law of the “unsolved murder”, or the ‘eglā ritual, finds itself at the end of a body of law which deals with public administration. The book of Deuteronomy as a whole presents itself as a sermon delivered at the boundary of Canaan before the conquest. It appears at first read to configure the administrative and religious life of the nation soon to be installed in its new land. The narrative sections which bracket the legal corpus set up this context. Scholarly work on the Pentateuch reached a focal point with the work of Gerhard von Rad in 1966 with his theory of a “Tetrateuch”, followed by what he called the Deuteronomistic History from the book of Deuteronomy through the histories of Joshua, Judges, Samuel and Kings, ending with 2 Kings 25 and the release of king Jehoiachin. This study thus respects the diversity of opinion on the details, but accepts the scholarly consensus on the broad coherence of the Deuteronomistic History. The most recent scholarly work on the Deuteronomistic History has identified, and attempted to resolve, various issues which have caused problems for earlier theories.

The first of the key scholars recognized in this study was Bernard Levinson. Levinson’s recognition that the legal material in Deuteronomy re-works the earlier material of the Covenant Code provides a foundation for a look at the ‘eglā ritual in the light of the literary development of the Torah. Levinson’s assertion that the author of Deuteronomy intentionally re-worked the Covenant Code material with a view to re-organising the cult, develops Frank Cross’ argument that Deuteronomy was in fact propagandistic. Based on this it is fair to claim that the Deuteronomist had at least one specific outcome in mind when writing, which Levinson asserts is “cultic centralization and local secularization” (Levinson, 1998: 51). I have called these intended outcomes “agendas”.

Levinson’s work proves the theory that there were certain agendas behind the Deuteronomist’s work, but the recent work of Thomas Römer both sharpened the focus on the identity of the Deuteronomist by exposing the book-finding narrative of 2 Kings 22-23 as the “foundation myth” of the Deuteronomistic work (2007: 49–51).

Mythological or not, the identification of the characters Shaphan and Hilkiah, representative of the scribal elite and the Temple cult respectively, with the Deuteronomist or “Deuteronomistic school” opened the way to the notion of a movement or school which spanned several centuries and recorded a tendentious history as diverse in interpretation and recording of that history as the lands and culture in which the people of Israel found themselves. The history of Israel from conquest to monarchy is thus seen through the eyes of Josianic or Neo-Assyrian, Babylonian and later Persian authors in the tradition of Shaphan and Hilkiah. This work casts new light on the agendas of the Deuteronomist since, primarily, it wrests the work from the firm grip of the monarch and places it in the realm of the priests and scribes, the elite of Israel. Although Römer does not specifically address the ‘eglā ritual, his three-fold edition of the Deuteronomistic work provides a key to its understanding.

The work of Ziony Zevit (1976), with his three-fold development of the ‘eglā ritual, traces the course of the reworking of an ancient ritual from its pre-Israelite form to the form in which it appears in the book of Deuteronomy. The process of Deuteronomization of the ritual arrives at a final form which bears the ritual efficacy of the ancient law, but strips from it anything that is at odds with the themes of Deuteronomy and modifies those elements which are incongruous. Furthermore, there are additions which respect the Deuteronomistic emphases on monotheism and centralization.

Based on current scholarship of the Deuteronomistic History, it is clear that the term “Deuteronomist” sounds more specific than it is. The Deuteronomistic school worked over at least the 7th to the 5th centuries BCE and, as identified by Thomas Römer, constituted several generations of relatives and collaborators of the descendants of Shaphan the scribe and Hilkiah the high priest. They wrote with specific agendas in mind and responded to the changing geographical and political environments in which the worshippers of YHWH found themselves. This drawn out period and diversity of individuals involved in the composition of the Deuteronomistic History would account for the inconsistencies in, for example, the behavior of king Josiah, which does not accord with the law of the king in Deuteronomy 17, yet who is evaluated by the Deuteronomist as follows: “Before him there was no king like him,

who turned to the Lord with all his heart and with all his soul and with all his might, according to all the Law of Moses, nor did any like him arise after him.” (*The Holy Bible: English Standard Version*, 2001, 2 Kings 23:25). Gary Knoppers argues that this apparent inconsistency arises from the fact that the Deuteronomy only evaluates certain aspects of each king’s reign positively, stating: “I argue that each of these judgements is associated with specific features of a monarch’s reign, in which that king is deemed unique and incomparable” (Knoppers, 1992: 413). In his earlier article on the relationship of Deuteronomy to the Deuteronomistic history, Knoppers asserts that “The Deuteronomistic school was not a monolithic entity”, acknowledging that the course of the literary development of Deuteronomy and the history gathered many varied emphases and viewpoints (Knoppers, 2001: 414).

For the purpose of this study it seemed appropriate to identify what might be the aims of the Deuteronomist, after first acknowledging the tendentious nature of the history and the propagandistic nature of the Deuteronomistic Historian as a whole, by looking at the main areas of public organization which were affected by the legislation in Deuteronomy. Even Bernard Levinson’s focus on the cult, as outlined above, affects the monarchy and the judiciary directly, so the three areas of impact were identified as the monarchy, the cult and the judiciary. Having done this, it would be worth mentioning that, in terms of Levinson’s hypothesis in his work *Deuteronomy and the hermeneutics of legal innovation*, the very secularization of the local setting and cultic centralization bring all of life under the administration of the cultic center.

Having firstly identified the probable group of authors of the Deuteronomistic History and the historical and geographical context of its development, it is possible to look at the ‘eglā ritual as a unit against the backdrop of the entire work and assess its fit in terms of the threefold agenda of the Deuteronomist. Firstly to divest the monarch of sovereign authority by subjecting him to the laws of Deuteronomy, effectively creating a constitutional monarchy; secondly, to remove from the domain of the king all responsibility for the judiciary and to establish a national judiciary with representation at a local level which is independent of the monarch, yet hardly *truly* independent since it now falls under the control of the priestly elite, the very group identified with the Deuteronomist; and thirdly, to bring all national administration under the cult while making the cult independent of the monarch so that he ceases to

be the patron of the cult. Effectively it could be said that the Deuteronomist transforms the administrative model of Israel from that of a sovereign monarchy typical to the Ancient Near East to a constitutional oligarchy, centered on the cult.

One can hardly study the book of Deuteronomy without acknowledging the powerful monotheism evident in its tenor. The pervasive theme of anti-idolatry and faithfulness to YHWH alone marks every chapter and underpins the audacious move by the Deuteronomistic school to sideline the monarch, presenting the institution as fraught with personality related dangers, and replace him with the religious intelligentsia who represent YHWH as the cultic leaders, both upholding the laws of Deuteronomy as the way to longevity and peace, and formulating those very laws.

From this standpoint we will now look at the 'eglā ritual in detail to see what may be concluded as to its integrity and fit in the Deuteronomistic work.

5.1. The origin of the 'eglā ritual

The sermon of Moses at the border of the promised land allows for a contingency, at some point in the future, where a death might occur at the hand of an unknown assassin. In modern forensics the case would be pursued for a reasonable amount of time, but would become an unsolved case, popularly called a “cold case”, and remain unsolved without taxing further resources of the legal system unless some new evidence or witness came to light. In the case of the fledgling nation however, the death has a deeper significance and even a threat to the point where something needed to be done. In order to understand the threat one doesn't have to go far, for the theme of “innocent blood” appears no more recently than in Deuteronomy 19:10, where, in connection with the cities of refuge that are assigned for the safety of the perpetrator of an unintentional homicide, “lest innocent blood be shed in your land that the Lord your God is giving you for an inheritance, and so the guilt of bloodshed be upon you” (*The Holy Bible: English Standard Version*, 2001, Dt 19:10).

It is clear that there is a perceived threat if innocent blood is shed (not that the victim in this case is necessarily innocent) and that threat would put the entire community at risk. The nature of the risk is unclear but, as Ziony Zevit asserts, “in the absence

of any mention of claims by a blood avenger, it would appear that the danger was supernatural” (Zevit, 1976: 381).

5.2. The purpose of the ‘eglā ritual

The purpose as stated in the ritual itself is וְאַתָּה תִּבְעֵר הַדָּם הַנִּקְי מִקֶּרְבְּךָ (The Hebrew Bible: Andersen-Forbes Analyzed Text, 2008, Deut 21:9) *to rid yourselves of innocent blood*. Three possibilities are stated by David P. Wright for the mechanism of the ‘eglā ritual from the work of J Scharbert, A D H Mayes and H Junker respectively. Firstly, it could be an oath ceremony accompanied by a vivid warning of the consequences of the elders’ lying about their complicity; secondly it could be a means of ensuring that the guilt laden animal, the guilt having been imputed to that animal, cannot return to the inhabited area; and thirdly a reenactment of the murder in an uninhabited area, thus removing the bloodguilt from the inhabited area (Wright, 1987b: 388–9). Wright then adds his own theory, that the ritual is a “rite of elimination” (1987b) in which the guilt is transferred not to the animal, but through the washing of the hands, to the river which removes it to the sea, or “distant bodies of water” (Wright, 1987b: 403).

Assuming that the ritual had an ancient and pre-Israelite form as asserted by Ziony Zevit, the original purpose might have been quite different from the ritual found in Deuteronomy, which has a glaring absence of any mention of supernatural consequence for the crime committed. In its original form the purpose of the ritual, taken over by the author of Deuteronomy, could have been a sacrifice to a chthonic deity, perhaps a god of the netherworld, placating the deities associated with reprisal, as mentioned by Ziony Zevit from the work of A. C. Welch (Zevit, 1976: 382). This being the case it doesn’t solve the riddle of the ritual’s presence in the legal corpus of Deuteronomy where there is no tolerance for other deities, least of all one which might bring about calamity independently of the will of YHWH. It is clear that the source of both blessing and curse is YHWH himself: “The Lord will send on you curses, confusion and rebuke in everything you put your hand to, until you are destroyed and come to sudden ruin because of the evil you have done in forsaking him” (The Holy Bible: English Standard Version, 2001, Dt 28:20).

It is my contention that the Deuteronomistic purpose of the 'eglā ritual is not to be found in any of the possibilities mentioned by David Wright which make it a re-enactment of the murder in a remote place so as to prevent the reappearance of the pollution, but also to remove the guilt to distant places, but that it is to be found in the ritual itself and in the word כפר, or "atone". It is this key concept which expresses the intention of the Deuteronomistic form of the ritual. The word is associated with blood sacrifice throughout the book of Leviticus, but not exclusively, as noted by Jay Sklar (2005: 99). He asserts that the allowance is made for a guilty party to make atonement for an offence by offering the offended party a payment in the form of a כפר, which serves to bear away the sin.

Since the prayer of verse 8 prays כפר לעמך ישראל אשר-פדית יהוה, it would appear that the elders are at the mercy of YHWH to accept the ritual as a כפר offering and thereby remove guilt from the community. The absence of blood does not mitigate against this theory since blood-less offerings of this nature are prescribed in the Priestly work and the fact that an unblemished animal is required further adds to the value of the gift or כפר.

To mention the work of Callum M Carmichael (1979), the narrative grouping of the five laws of Deuteronomy 21 do appear to form a literary unit and the notion of the proximity of life and death as a threat to community is compelling, but this fails to shed any light on the law which came to the legal corpus of Deuteronomy through a long literary pre-history. Furthermore, the present form of the ritual appears to have an Israelite background far deeper than simply an illustration of the calamity faced when death and life intersect.

In Deuteronomistic terms, and in the absence of a perpetrator to bear the punishment, the one offended is YHWH and the subject of the 'eglā ritual is YHWH. Thus, against the notion of this being a riddance ceremony as proposed by David P. Wright, and in the light of the recognition that the threat to the community is supernatural, ergo: YHWH, I contend that the 'eglā ritual has the purpose of making an expiation offering (כפר) to YHWH for the guilt which has come upon the community through the shedding of innocent blood and the associated threat to their

wellbeing in terms of the blessings and curses of the final chapters of Deuteronomy. It is the prescription of the stipulations of the offering which ensures the efficacy of the offering made in integrity and effects the *כִּפּוּר* or atonement of verse 9, the offended party having been effectively satisfied.

The matter of the violence of the ritual ought to be mentioned at this point, particularly in the light of Esias Meyer's recent paper, "The role of the Old Testament in a violent world," on the debate regarding the reception history of violent Old Testament texts. While the 'eglā ritual can hardly be compared to the great conquest narratives of the books of Joshua and Judges in terms of violence, Meyer's comment does apply. His study focusses on the work of three scholars, including that of Gerlinda Baumann, whose 2006 article he references extensively (Meyer, 2011). He writes, concerning the positive approach of Baumann to violent Old Testament texts:

Baumann's reading also has greater potential value in the sense that violent stories like these might help ordinary people to express something of their own experienced violence. This reading presumes that talking about violence might keep people from committing it. (2011: 7)

While Meyer is doubtful of the deterrent value of the extremely violent portrayals of God's work with Israel in the Old Testament, the notion could certainly apply in the context of the 'eglā ritual.

Eben Scheffler, in his article "Reflecting on (Non-) Violence in the book of Deuteronomy in (Old Testament) Canonical Context" (2014), departs from his major theme of violence between humans, especially in war, to comment on the notion of violence against animals. While he may be hopeful in his assessment that vegetarianism might be the prevailing dietary preference a century from now, his examination of the thesis that the record of violence in Deuteronomy might have a restraining influence on violence per se, is intriguing (2014: 582). He states that "violence *permeates* virtually every chapter of Deuteronomy, and not only the Deuteronomic Code of chs. 12-26". Included in his observations is the fact that violence is even directed against Israel in the curses of Deuteronomy 28. His point is that the level of violence in Deuteronomy is extreme (2014: 584) and in such a world the "pro-active" violence against an animal in Deuteronomy 21:1-9, presumably for

its shocking effect, actually may work to restrain the would-be blood avenger from an act of violence. Scheffler's attempt to find a motive of non-violence in the brutal landscape of Deuteronomy does seem a stretch, but it makes the point that in such a violent world, the theatrical cruelty of the death of an innocent animal may be necessary in order to protect a human right: that of the suspect in an unsolved murder case (2014: 588).

5.3. The strata of the 'eglā ritual

As we have seen from the grammatical form of the description of the 'eglā ritual as it appears in Deuteronomy, there are indications that it indeed "bears the marks of great antiquity" (von Rad, 1966: 15). The process of its development from antiquity to present form is what we have investigated in the work of both Ziony Zevit and, by specific application, Thomas Römer. The history of the theory of development of the Deuteronomistic History which we discussed in chapter 1 shows that this complex debate is hardly likely to be settled any time soon, but the most recent theories do recognize the complexity of a document, or a series of documents, which have come into existence as literary units after a long pre-history of literary development at the hands of generations of authors despite Thomas Römer's assertion that the two names Shaphan and Hilkaiah represent the scribal and priestly groups respectively.

Turning to look at the 'eglā ritual, we recognize first of all, that the original ancient ritual which became modified in the Hebrew Scriptures, was steeped in the notion that an unrequited death bore dire consequences for the community and a ritual which averted the calamities inevitable due to this kind of travesty was essential to the ongoing fertility of the land and fecundity of its inhabitants. It is unclear as to whether the ritual was intended to be ritual punishment of the unknown killer, a re-enactment of the murder in a remote place or merely a ritual sacrifice to placate the netherworld gods, but the need of the ritual is clear. The exact scope of this original is almost impossible to measure from the present Deuteronomic form in Deuteronomy 21:1-9, but after the attempt by Ziony Zevit, we might reconstruct it as having the following elements:

- i. The discovery of a body with no evidence as to the identity of the assailant;

- ii. The identification and assignment of responsibility to the nearest town;
- iii. The provision of a sacrificial animal;
- iv. The choice of a remote location, possibly with running water;
- v. The slaughter of the animal as an expiatory offering;
- vi. The washing of hands over the animal;
- vii. The denial, which may have been a judicial oath formula before a local judiciary;
- viii. The result – absolution *and* riddance of the calamity.

The exact form of these original elements have been lost in the adoption and reformulation, or what Ziony Zevit calls “Yahwehization” (Zevit, 1976: 378), but these elements appear to constitute the bare minimum of such a ritual. Zevit’s reconstruction of the early ritual marks it as “juristic and prophylactic” making the above elements, apart from possibly item ii, essential to the early ritual (Zevit, 1976: 389).

In Ziony Zevit’s reconstruction, the next stage of “*Early Israelite Ritual*”, the main additions are:

- i. The notion that this was both a זֶבַח שְׁלָמִים as well as being an expiatory sacrifice, accounting for the change of gender of the sacrificial animal to female, which in this case was allowed, and now had become the norm;
- ii. The juristic denial, or oath, became a Yahwistic prayer offered to the only one who could withhold the curse of innocent blood, removing any magical element;
- iii. The valley became desolate and agricultural activity prohibited due to contact with the corpse;
- iv. Finally, this ritual in this form became fixed in the pre Deuteronomic b‘arta collection of laws.

This second tier development of the ‘eglā ritual modifies key elements in order to bring it into the Israelite cult, but has no issues of centralization for the cult, local

judicial autonomy or problems caused in the local Levitical priesthood due to centralization.

In terms of Thomas Römer's threefold edition of the Deuteronomist, this level of development appears to be too early to have encountered the Josianic redaction which would have been the early work of the Deuteronomistic School. As to who was responsible for the collection of the b'arta laws is unclear, although it appears to have become one of a number of legal documents contributing to the Deuteronomic legal corpus, having come to the attention of the Deuteronomist due to the addition of Deuteronomy 17:8-31, by an early Deuteronomist, which suitably Deuteronomized the b'arta collection (Zevit, 1976: 380). If this is the case, then a Deuteronomist was at work preparing the 'eglā ritual for acceptability for inclusion in the legal body of Deuteronomy. The self-conscious Yahwehization of the ritual brought it a step closer to the final YHWHistic final form in Deuteronomy. This stage Zevit calls the "Pre-Deuteronomic Yahwistic" stage.

In the next stage of the development of the ritual, as described by Zevit, he appears to oversimplify the Deuteronomist's contribution to the process. With one paragraph, he dismisses the work of the Deuteronomistic school, which Thomas Römer describes as having continued from the Neo Assyrian period down to the Persian. He writes:

It is clear, then, that prior to becoming part of its present context in Deuteronomy, the pericope, or a form of it, was part of an independent deuteronomic collection, and before that, part of a non-deuteronomic, Yahwistic, Israelite collection. This being the case, the hypothesis that an original pre-Yahwistic text immediately underlies the extant text of the pericope can no longer be maintained, and conclusions based on that hypothesis cannot be accepted without serious modification (Zevit, 1976: 380).

If this is the case, the work spanning some three centuries would surely have shown evidence of more of a gradual process than that shown in Zevit's final paragraph. The obvious problem would be to unravel the strands of this development in terms of a pre-Exilic monarchic Deuteronomistic school, one which lived in the exile under Babylonia and the one which lived in the period of the return under the Persian Empire.

Zevit's final reconstruction includes:

- i. The replacement of slaughter with neck-breaking to accommodate for the centralization of cultic slaughter;
- ii. The introduction of the priests to represent the central sanctuary;
- iii. The introduction of the judges to represent the monarchy and help with the measuring.

Quoting from the Mishnah, Sotah 9, Zevit points out that the ritual continued in use until at least the Second Temple period. The modification of the ritual in these terms would have satisfied the programme of cultic centralization, but point iii is unlikely in terms of the disempowerment of the monarch, as discussed above.

In terms of the above, it is possible that a four-stage (or even five-stage) process is more accurate, looking like this:

Stage 1: The pre-Israelite ritual;

Stage 2: The ritual of the b'arta collection worked on by the early Deuteronomistic School, possibly in the 7th century BCE, altering the gender of the animal and the denial to become a YHWHistic prayer;

Stage 3: The early Deuteronomistic form of the ritual with centralization sensibilities, altering the slaughter to a neck-breaking and introducing judges as representatives of the monarchy. This stage could have been two separate stages;

Stage 4: After the monarchic period and in exile, the introduction of the priests to oversee and assure proper practice;

While this description of the process is only one interpretation, it is clear that the process in question is far more complex than a simple adoption by the Deuteronomistic school of an ancient ritual which they simply reworked in one stage.

5.4. The final form of the 'eglā ritual

It would be remiss of any writer to neglect to look at the 'eglā ritual as a final entity. After several readings, it may be that the full impact becomes dulled, but returning it to

an ancient context, at least in the imagination, will re-infuse the text with its dramatic literary power.

The authors, whomever they were over the period during which the pericope of Deuteronomy 21:1-9 grew to its final form, were inspired by their devotion to YHWH and his people, to create a piece of legislation which was there to solve a particular jurisprudential problem. The final form carries a number of stark elements which are possibly more about ethical formation than about judicial regulation. It would be helpful to unpack the context in which the ritual might have taken place in the monarchic period of Israel's life.

On its own, the discovery of a body is a shocking thing. The age and identity of the discoverer would surely also have a bearing of its psychological impact and, when the discovery is reported to the elders and it becomes public knowledge that a corpse lies in the open field, it would definitely attract more than a little curiosity.

From the description in the pericope, it sounds as if the land at the time is expected to be populous and that there might be some dispute as to which was the nearest city. The addition of the judges and priests would heighten the sense of "event" in the surrounding communities and, no doubt, the entire surrounding countryside would be abuzz with the news, with speculation rife as to who might be responsible. Once the news spread, there could easily be a visit from a delegation of very suspicious members of the family of the deceased, looking for answers and a culprit with words like "blood revenge" being whispered.

Assuming that the occurrence was infrequent that such a body was found, it would bring about a frenzy of community activity, with new people in town for forensic and cultic purposes and the fear that somehow the finger might be pointed in the direction of someone near and dear.

Along with the activity, suspicion and fear, would go the knowledge that this occurrence threatened the ongoing existence of the community at large. Innocent blood had been spilt.

the ritual, addressed not to the central administration but to the communities nearest to the corpse, immediately broadens the sense of responsibility by an arbitrary

selection of the nearest city to bear responsibility. The arbitrariness of the selection process heightens the fact that all are affected, but one is called to act.

It is here that the drama heightens. The lowing animal, a youngling from the herd, is brought forth and marched out to a remote place. It's hard to imagine that the curious, the grieving and the dependent would not be in tow. From grandparents to the young children on the hip, all would probably join the procession in which they now held an interest. Explicit in the mention of the priests, and implicit in the fact that this is the end of a forensic process, is the likelihood that the priests and judges (possibly one and the same group) process out with the people, adding ceremonial and civic weight to the occasion. The field and stream, just by virtue of their being uncultivated and yet well watered, would probably be a beautiful and peaceful setting, but that setting was about to be brutally changed.

Here the theatre reaches fever pitch. The animal, now separated from the herd and probably aware of some abnormality, might be highly distressed and rightly so, for the elders must now break the not insignificant neck of this young beast, who even, if only just weaned from its mother, would be of significant weight. As common a sight it might have been to see a local slaughter of a bovid for the butcher, it would surely have been an uncommon sight to see the killing of a cow in a way which rendered it unfit for food. It is hard to imagine the shock and horror of the onlookers as the fine young heifer is beaten with a large stone or branch of a tree until its neck is broken. The sheer waste of life would be tangible.

It is at this point that an irony, which escapes the casual reader, creeps in. The very ones who have pulverized the neck of the heifer are the ones who now wash their hands over the lifeless animal and declare their innocence in prayer. The sheer ambiguity of the spectacle must have left the onlookers confused about innocence and guilt, about culpability and blamelessness and asking questions about exactly where they fit into the picture.

Finally there is a declaration. The innocent blood is purged from the midst of the people. And look what it took! If the term "judicial theatre" exists, then this is it.

Assnat Bartor, in her work *Reading law as narrative: a study in the casuistic laws of the Pentateuch*, introduces the concept of the lawgiver as psychologist. The idea is

that the narrator, representative of the lawgiver in Deuteronomy, through narrative in the casuistic laws, introduces elements of deep psychological impact which affect the reader so as to form their ethics through transforming the psychological response to ethical situations (2010). This law would be an example of how the narrative which unfolds as the events are retold and the ritual prescribed, would illicit an emotional response on the part of the reader or hearer of the sermon and it would leave an indelible mark on their psyche. The purpose of the 'eglā ritual as formative is one corroborated by the study of Esias Meyer on Social Capital (2013). The notion that the community might be "bonded" through the practice of the ritual highlights its function and power. This concept introduces another element in the purpose of the inclusion of the ritual in the legal corpus of Deuteronomy. Even if, as asserted by Ziony Zevit based on the writing of S Loewenstamm, the practice was "eventually abrogated" (Zevit, 1976: 379). In the light of the discussion of violence in the text above, this is an avenue worth pursuing in another study.

This notion that the law needs not actually to be practiced in order to have the desired effect of stirring the community to greater accountability and corporate responsibility for one another's wellbeing fits well with the idea that the 7th century Deuteronomist aimed to create at least a constitutional monarchy and that the last of the Deuteronomists, working in the Persian period had little more to hang onto than the religion of the book. The constitution had become Scripture and now defined life apart from king, cult and temple while appealing to these with deep pathos in order to steer its readers into common ethical ground.

5.5. The 'eglā ritual and the Deuteronomistic agenda.

In Chapter 2 we established that there were essentially three areas in which the Deuteronomistic agenda operated. Firstly, there is the agenda of disempowerment of the monarch and the creation of a constitutional monarchy. Secondly, there is the relocation of the judicial center from the palace to the temple and thirdly, there is the centralization of the cult at the temple in Jerusalem with its associated decommissioning of the local shrines and re-deployment of the local priests as judges who could serve as priests at the central temple if so commissioned.

Having examined the ritual from a grammatical, thematic and literary point of view, and taking into account not only the long development history of the ritual from an ancient magical rite to the YHWHistic Deuteronomistic rite as an atonement rite, it has become clear that the 'eglā ritual as it appears in the Torah form of Deuteronomy, accords with the essential agendas of the Deuteronomist. While acknowledging the inconsistencies between the legislation of the book of Deuteronomy and the practice and evaluation of the kings in the history, any evaluation of the 'eglā ritual can only take into account the agendas of the Deuteronomist as they are expressed in Deuteronomy.

The first agenda we considered was that regarding the monarchy. The rite is narrated by the preacher, ostensibly Moses, to the people of Israel without the intermediary of the king. Bernard Levinson cites examples from the Ancient Near East where the king is commissioned by the god to administer justice (Levinson, 2001: 515). In the case of Israel, however, the book of Deuteronomy makes the judiciary independent of the monarch and lawmaking becomes the province of the cult. In the case of the 'eglā ritual, the same holds true. The king features nowhere in the ritual. He neither presides over the forensic investigation, nor does he ensure that the ritual is appropriately practiced. The only officials present at the event are the priests, the judges who are now cultic representatives and the local elders. The 'eglā ritual thus follows the Deuteronomistic agenda of divestment of the king of judicial oversight.

The second agenda to be investigated was the relocation of the judiciary. While the pre-monarchic federation of clans administered justice locally through the elders and any oracle, oath or ordeal was carried out through the local cultic shrine, with the advent of the monarchy in Israel, despite the histories accounts to the contrary, the book of Deuteronomy establishes a judiciary which is independent, at least of the monarch. The final form of the 'eglā ritual allows the local judges to preside over the performance of the ritual as representatives of the central judiciary which is congruent with the central cult. While this might seem to be one of those cases that is "too difficult" (Deut 17:8), it is in fact impossible. There is no suspect to try and thus no case to judge. So the performance of the ritual at a local level by local elders is not at odds with the law in Deuteronomy 17.

Finally, there is the matter of the cult. As argued above, הָעֵגְלָה הָעֲרוּפָה is not a blood sacrifice, neither is there any reason to insist that the ritual occurs at the central sanctuary because it is an atonement offering. The local priests are not required to perform the neck-breaking but it does appear that they are required to observe, perhaps simply to ensure that the stipulations are adhered to. The exact mechanism of the offering leading to the absolution is unclear but the land immediately around the offering is polluted in some way by the sacrifice. The ritual does not contravene the instruction beginning with וְהָיָה הַמָּקוֹם אֲשֶׁר־יִבְחַר יְהוָה אֱלֹהֵיכֶם בּוֹ לְשֹׁכֵן שְׁמוֹ because this particular offering is not required to be performed centrally.

5.6. Conclusion: Deuteronomy 21:1-9 a Deuteronomistic anomaly?

The original question which was posed in the introduction asked “Is Deuteronomy 21:1-9 a Deuteronomistic anomaly?” What is being investigated is whether the ‘eglā ritual accords with the overall programme and agenda of the Deuteronomist.

We acknowledged that there are several themes within the Deuteronomistic work and these themes cover a multitude of areas of life, from secular, local clan and family organization to the central administration and cult. The distinction was drawn between themes, such as love, faithfulness or fidelity, and *agendas*. The former serve to create the ethos of a fledgling nation while the latter serve to organize the nation at three levels: The Monarchy, the Judiciary and the Cult.

These three agendas, were then distilled to show that the primary programme of the Deuteronomist was to relocate power from the monarch to the cult, and more specifically the priests and the scribal elite within the cult.

This study serves to show that there is nothing anomalous about the ‘eglā ritual in the context of Deuteronomy. However, while Bernard Levinson’s erudite hypothesis approaches the legislation of Deuteronomy as legal innovation with the express purpose of centralizing the cult and removing any cultic content from local life, there is another level going on which is steeped in the cultic life of Israel.

The cult is full of ritual. From the simplest of daily offerings to the grandest of festivals, but each of these rituals has come into being through exactly the process of innovation. Inspired by faithfulness to YHWH, the Deuteronomist was not only a legal innovator, but also a “ritual innovator”.

The hermeneutics of ritual innovation (MacDonald, 2012) invented rituals using the lemmas and phraseology of ancient texts: “[T]he hermeneutics of ritual innovation present new rituals as though in essential continuity with earlier rituals despite significant innovations. Unlike the hermeneutics of legal innovation in Deuteronomy, the hermeneutics of ritual innovation do not seek to displace existing rituals. Indeed, they depend on the other rituals to create a density of traditional ritual actions upon which they improvise” (MacDonald, 2012: 370–1).

It is this innovation at a ritual level which the Deuteronomists have employed. Without undermining the legal tenor of the Deuteronomist’s purely legal material, he has constructed a ritual of literary power which, if practiced, would leave lasting effects in the corporate mind of the community and inspire collective accountability and mutual care. But even if the ritual could not be practiced, as was inevitably the case once Israel was forced to live without a temple, the narrative of the ‘eglā ritual would evoke powerful emotions for the careful and imaginative reader.

5.7. A final word of reflection

To return to the beginning and the theft at our local parish which was solved by the local street-dwellers: The life of the street people is a complicated and tenuous one. It would be simplistic even to attempt to distill a reason for the behavior of the group when its security is threatened, but what appears evident is a sense that all of the community is somehow interconnected and one person’s behavior affects another’s wellbeing and even that of the entire group. When faced with the text and the pulpit, it became clear that a sermon on the ‘eglā ritual had to bring our community, who live largely disconnected lives in relatively affluent suburbia, face to face with our interconnectedness. If we are outraged by the horror of crime and violence in our immediate world, the ‘eglā ritual forces us to look inwards and at our own behavior with a view to our self-righteous indignation.

Are we indeed innocent, or are the apparently minor indiscretions of our lives, like accepting cash for goods or services which is not declared to the Revenue Services, or failing fully to stop at a stop sign, perhaps making us tacitly culpable for the broader deterioration of law and order?

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